United States Court of Appeals for the Second Circuit



APPENDIX

75-6062

United States Court of Appeals FOR THE SECOND CIRCUIT

DOCKET No. 75-6062

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

WILLIAM L. MATHESON, Executor of the Will of Dorothy Gould Burns, Deceased,

Defendant-Appellant.

WILLIAM L. MATHESON, Executor of the Will of Dorothy Gould Burns, Deceased,

Plaintiff-Appellant,

against

UNITED STATES OF AMERICA,

Defendant-Appellee.

JOINT APPEND!X

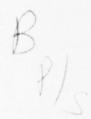


Martin, Obermaier & Morvillo 1290 Avenue of The Americas New York, New York 10019

Patterson, Belknap & Webb 30 Rockefeller Plaza New York, New York 10020

Attorneys for Appellant William L. Matheson

THOMAS J. CAHILL United States Attorney 1 St. Andrews Place New York, New York 10007 Attorney for Appellee



PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES (73 CIV. 2011)

- 5-5-75 -- itis case consolidated with 7h Civ. 2h37-- for all purposes .- Dury Y, ..

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

73 CV. 201

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Docket Entries (73 Civ. 2011)

(PE # 2) 79 (IV. 201	1
DATE PROCEEDINGS	Date Ord Judgment
5-4-73 Complaint filed and summons issued.	
May. 23-73 Filed summons with marchals return: Sereed:	***.
W.L. Matheson, Ext. Est. D. Gould Burns on 5-15-73.	
6-5-73 m File pltf's. smended complaint. No summors issued.	***
6-I-73 Tiled Ceft's. William L. Motheson ANSWER to complaint.	PB&W
Rule 56, for grating a summary judgment, ret. on June 20,1973.	
. 6-15-73 Filed dert's. memorandum in support of dert; sn motion for summary	
l'udgment.	
6-15-73 Filed deft's. amended answer to complaint.	
Jul. 2-73 Filed stip & order that deft's motion for summary judgment is adj. J	
from 6-26-73 to 7-24-73, So ordered, Duffy, J.	
Oct 10-73 Filed stip & order that deft's motion for summary judgment is adjourned	<u>; : - </u>
to 4-16-71, DIFFY, J.	
Dec. 6-73 Filed deft's interrogs. Dec. 6-73 Filed deft's request for production of documents.	
	7
Jan. 25-73 Filed pltfi's interrogs. Jan. 25-71: Filed deft's notice of taking depositions of Francisco Liguori and Jose Liguori	
on 3-5-74	
Feb 1-74 Filed deft's partial answers to interrogs.	
eb.20-74 Filed deft's notice of change of Attest address.	
eb.20-71 Filed notice of defi's atty. change of accirect.	
March 11:-71 Filed pltff's notice of taking deposition of deft, on 5-9-74. [pril 2-74 Filed stip & order adjourning the hearing of deft's motion for surmary judgment	
fried Stip & Order at Journal of the Married - Duffy, J.	
Pay 6-74 Filed deft's partial answer to interroge.	
New 22-71: Filed depositions of Francisco Liguori and Jose Lignori	
May 23-74 Filed deft's supplemental affort, of Herbert H. Chaice in support of motion for	
summary judgment.	-
Pay 29-74 Filed pltff's answers to interrogs.	
June 7-74 Filed deft's second supplemental affdvt. (of "erbort H. Chaice) in support of notion for summary judgment.	-
June 19-7% Filed pltff's second imerrogs.	
June 17-74 Filed pltff's requests for admission.	
June 21-74 Filed transcript of record of record of recording and -5-8-74	-
June 21-74 Filed transcript of record for the control of the 5-9-74. July 5-74 Filed deposition of William L. Matheren, dited 5-9-74. July 5-74 Filed deft's objections and responses to pitff's requests for admissions.	-
July 6-71: Filed deft's answer to second interrogs.	-
July 26-74 Filed stip & order extending pltff's time to respond, etc. to deft's motion for summer judgent to 3-1-74 and as indicated. So ordered-DUFFY, J.	-
Aug. 1-74 Filed pltff's affect, of Mel P. Dorkan and notice of motion for an order to	1
consolidate the above actions for all purposes. Let. 9-10-71.	1.
Aug. 1-74 Filed memorandum of law by the U.S.A. on motion for consolidation.	
Aug. 1-74 Filed pltff's affdyts, and notice of motion for an order granting to pltff.	
summary judgment. Ret. 9-10-74	ļ:
Aug. 1-74 Filed remorandum of law by the U.S.A. on motions for surmary judgment.	-
Aug. 1-74 Filed pltff's statment pursuant to Rule 9 (g) Aug. 19-74 Filed deft's statement pursuant to Rule 9 (g) and reply to pltff's statement.	-
Aug. 19-74 Filed reply nemorandum in support of deft's motion for summary judgment and in	1
occostion to pitffly cross-mation for summars judgment.	1
Dec. 6-7Lled supplemental and reply memorandum of law by the U.S. of America on motions	
for summary judgment.	-
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6 CIV. 2013	1 U.S. OF AMERICA- VSP WILLIAM L. HATHESON, etc. et al	.:
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	(PAGE # 3) \\\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \	
	vil Derket Continuation	:-
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DATE	PROCEEDINGS	31
May 9-75	Filed Coining # 12389- because the issues raised in the related action between	1
,	the same parties are identical to those raised in the instant case, the metlo	
	to consolicate the two cases will begranted, and my ruling on the metions 100	r
	summary judgment will be dispositive of both cases. For the reasons stated,	_
	there being no disputed material facts, either of the two theories set out	_
	above supports an award of summary judgment in favor of the United States.	-
	DUFYY, J. (m/n)	-
May 14-75	Filed pltff's notice of entry of a copy of an Opinion entered on 5-9-75 Filed Judgment # 75,406 (consolidated action) - ordered that the United States	-
	of America have judgment against William L. Patheson as Executor of the	_
	Es tate of Dorothy Gould Burns - in 73 Civ. 2011 (KID) in the amount of	_
٦.	s 10.700.00 plus interest at the rate of 6% per amum from 5-1-(1 to 5-44-()	-
	in the amount of \$ 2.622.21 together with costs in the consolicated action in	ч
	amount of \$ 850.04 amounting in all to \$ 14, 203,24 in /4 Civ. 243/ (All)	L.
	the complaint is dismissed with prejudice and with costs in the amount stated	-
	in the preceding paragraph. DUFFY, J. Judgment entered 5-27-75 Clerk (m/n)	+
May 28-75	Filed U.S.A. notice of entry (consolidated action) of a copy of a judgment	+
	cintered on 5-27-75	+
July 7-75	Filed notice of appeal by William L. Matheson, Executor of the will of Dorothy	+
	Gould Burns, deceased from memorandun-coinion on 5-9-75 and from final	+
	judgment on 5-27-75, Copies mailed to: Deft, William L. "athes wa and	+
Aug. 1-75	U.S. Atty. Fat. 7-10-75 Filed notice that the record on appeal has been certified and transmitted to the	+
mg. 1-15	11.01 - OC 03 M	+

USCA on 06-01-75

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AMENDED COMPLAINT (73 CIV. 2011)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK Ellene 2/18/23

UNITED STATES OF AMERICA.

Plaintiff,

: AMENDED

COMPLAINT

-v-

73 Civ. 2011

: KTD

WILLIAM L. MATHESON, Executor of the Estate of Dorothy Gould Burns, Deceased,

KI

Defendant. :

Plaintiff, by its attorney, Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, for its amended complaint alleges as follows:

- 1. That this is a civil action in which the United
 States, pursuant to Section 7405 of the Internal Revenue Code
 of 1954, seeks to recover the amount of taxes erroneously
 refunded to William L. Matheson, Executor of the Estate of
 Dorothy Gould Burns, Deceased, by the Internal Revenue
 Service.
- 2. That this action has been brought with the authorization and at the request of the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and by the direction of the Attorney

General of the United States pursuant to the provisions of Section 7401 of the Internal Revenue Code of 1954.

- 3. Jurisdiction of this action is conferred upon this Court by Sections 1340 and 1345 of Title 28, United States Code, and Section 7402 of the Internal Revenue Code of 1954.
- 4. The defendant, William L. Matheson, is being sued as the Executor of the Estate of Dorothy Gould Burns, Deceased, and has been served with process within the jurisdiction of this Court.
- 5. On April 17, 1967, the defendant, William L.

 Matheson, as attorney in fact for Dorothy Gould Burns, filed
 a federal income tax return for her taxable year 1966 indicating
 the amount of taxes due for that period of \$6,948.97, which
 sum was paid to the Internal Revenue Service at the time the
 return was filed.
- 6. On or about July 5, 1969, the taxpayer, Dorothy Gould Burns, died.
- 7. On April 17, 1970 the defendant, William L.

 Matheson, as Executor of the Estate of Dorothy Gould Burns,

 Deceased, filed a Form 843, Claim for Refund, for federal

 income taxes with the Internal Revenue Service claiming a

 refund of taxes paid for the year 1966 on behalf of the

 Estate of said decedent in the amount of \$8,687.44.

8. Defendant's claim mentioned in paragraph 7 above stated the following basis for refund:

Taxpayer filed her return on the basis of her being a United States citizen. However, after her death, it was determined that since 1944 she was in fact a Mexican citizen and since at least 1957 she was domiciled in and a resident of France. Accordingly, only her U.S. source income is subject to tax, as defined by section 861 of the Internal Revenue Code, at the applicable U.S.-France treaty rates.

- 9. On May 7, 1971, pursuant to the representation made by the defendant in his claimfor refund as described in paragraph 8 above, the Internal Revenue Service issued a refund check to the defendant in the amount of \$10,790.99 representing the amount of his refund claim and accrued interest of \$2,103.55.
- defendant, plaintiff, through its employees in the Internal Revenue Service, determined that said refund had been erroneously issued because the deceased taxpayer, Dorothy Gould Burns, was in fact a citizen of the United States throughout her taxable year 1966 and that she remained a citizen of the United States
- 11. Although a demand was duly made upon the defendant to reimburse the United States in the amount of \$10,790.99 plus statutory interest thereon from May 7, 1971,

with respect to said erroneous refund, defendant has refused to honor said demand.

WHEREFORE, plaintiff, the United States of America, demands judgment against the defendant as Executor of the E tate of Dorothy Gould Burns, Deceased, in the amount of \$10,790.99 and interest according to law upon said amount from May 7, 1971 until the date of judgment plus the costs and disbursements of this action and such other and further relief as the Court shall deem just and proper.

WHITNEY NORTH SEYMOUR, Jr.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:

MEL P. BARKAN
Assistant United States Attorney
Office & Post Office Address:
U. S. Court House
Foley Square
New York, New York 10007
Tel. (212) 264-6537

TO: MR. WILLIAM L. MATHESON Room 4701 277 Park Avenue New York, New York

AMENDED ANSWER (73 CIV. 2011)

UNITED	S	TATES	DIS	TRIC	CT C	OURT
SOUTHER	NS	DIST	RICT	OF	NEW	YORK

UNITED STATES OF AMERICA,

Plaintiff, :

AMENDED ANSWER

WILLIAM L. MATHESON, Executor of the : 73 Civ. 2011

Estate of Dorothy Gould Burns, Deceased,

Defendant.

Defendant, William L. Matheson, as executor of the will of Dorothy Gould Burns, deceased, by his attorneys, Patterson, Belknap & Webb, for his answer in the aboveentitled action, alleges as follows:

- 1. Denies knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraphs 2 and 10 of the complaint.
- 2. Denies each and every allegation contained in paragraphs 5 and 7 of the complaint.
- 3. On April 17, 1967, said Dorothy Gould Burns filed a Federal income-tax return for the taxable year ended December 31, 1966, which showed a tax due for said period of \$13,741.69, and at the time of the filing of said return she paid the balance of the tax shown due in the amount of \$6,948.97.
- 4. On April 14, 1970, said William L. Matheson, as the executor of the will of Dorothy Gould Burns, filed a timely claim for refund with the Internal Revenue Service

seeking to recover an overpayment of income tax in the amount of \$8,687.44 with respect to said taxable year, together with interest on such overpayment.

- 5. During the entire said taxable year said Dorothy Gould Burns was a non-resident of the United States of America, residing at "La Pauline," Aix-en-Provence, France, and was not a citizen of the United States of America, having lost her United States citizenship on or about December 21, 1944, at which time she took an oath of allegiance to the Republic of Mexico and renounced all citizenship foreign to said Republic, including the citizenship of her country of origin, namely, the United States of America.
- 6. The refund made by the Treasurer of the United States of America on or about May 7, 1971, with respect to said taxable year in the amount of \$8,687.44, plus interest of \$2,103.55, to said William L. Matheson, as said executor, was properly made.

WHEREFORE, the defendant demands judgment dismissing the complaint in all respects and granting to the defendant such other and further relief, including costs and disbursements, as to the Court may seem just and proper.

PATTERSON, BELKNAP & WEBB

By Herbert H Chaice

A Member of the Firm
Attorneys for Defendant
Office and P.O. Address
One Wall Street
New York, New York 10005
212 WH 3-1300

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DOCKET ENTRIES (74 CIV. 2437)

CIVIL DOCKET UNITED STATES DISTRICT COURT

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JUDGE-UK

Jury demand date:

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			For p	laintiff: RSON, HELKNAP ALL STREET, N WH 3-1		
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WILLIAM L. PULLHESON EXPOSTOR FIC. VS. UNITED STATES OF AMERICA.

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LATE	PROCEEDINGS	Judgment N
Jun 5-71	Filed Complaint, Issued Summons,	- 7
June 1172	Fire summons and return-cerved Paul Current Vere Atty. by Pr. 4cc on C-2-/4	
	and copy mailed to Atty. "cheral, Wesh., D.C. by continued mail- #101703.	
Aug. 1-74	Filed deft's affdyt. of Mel P. Barkan and notice of motion for an order to cons	olidate
	the above actions for all purposes. Ret. 9-10-74 (filed in 73 Civ.2011 KT)) .
AT: E. 1-74	Filed merorandum of law by the U.S.A. on motion for consolidation.	
Aug. 1-74	Filed deft a notice of motion for an order granting deft. Summary judgment.	
. 1	Ret. 9-10-74.	
A10. 7-7/1	Filed monorandum of law by the M.S.A. on motions for summary judgment.	·
mg - 1-74	Filed ANSWER of deft.	U.S.A
iep. 1-7)	Filed pltff's affdyt. of Herbert H. Chaice and notice of motion for an order	<u>'</u> .
	staving further proceedings pending resolution of the motion and cross-motion	
	for summary judgment. Ret. 9-10-74.	
ep. 14-71	Filed pltff's affort of Herbert H. Chaine in support of motion for stay and in	
·	opposition to deft's motions to consolidate and for summary judgment. Filed Opinion # 42389- because the issues raised in the related action between	
Hay 9-75	Filed Opinion # 42309 because the issues raised in the related action between	
	the same parties are identical to those raised in the instant case, the motion	n to
	consolicate the two cases will be granted, and my ruling on the motions for	
	summary judgment will be dispositive of both cases, For the reasons stated,	
	there being no disputed material facts, either of the two theories set out	
	above supports an ward for summary judgment in favor of the United States.	
64 11-7E	DUFFY, J. (m/n) (filed in 73 Ctv. 2011) Filed pitr: b notice of entry of a copy of an Opinion entered on 5-9-75	
W- 62 65	Filed Andgment # 75,166 (consolidated action) - ordered that the United States	
nuv 23-75	of there as have indiment section. William I., "Etheson, as executor of the	
·	Estate of Dorothy Gould Burns- in 73 Civ. (Cll(K.T.f) in the amount.	,
	or \$ 10.790.79 plus interest at the rate of OF per annum from 5-1-/1 to	
	C-22-77 in the angunt of \$ 2.622.21 together with costs in the consolidated	
	section in the angent of \$850.00 amounting in all to \$ 14.263.24 in	*:
-	74 Civ. 2437 (K.T.L.), the complaint is dismissed with prejudice and with	
	costs in the amount stated in the preceding paragraph. DUFFY, J.	
-	Judgment entered- 5-27-75. Clerk. (m/n) (filed in 73 Civ.2011	.)
		V - 1
Aug. 1-75	Filed notice that the record on appeal has been certified and transmitted to the	
	USCA on 8-1-75 (see 73 Cir. 2011 KTD)	
	the same of the sa	

A 12
COMPLAINT (74 CIV 2437)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM L. MATHESON, Executor of the Will of Dorothy Gould Burns, Deceased,

Plaintiff,

CIVIL ACTION

No. 74 CW 2417

v.

UNITED STATES OF AMERICA,

Defendant.

Jir. Dusty

COMPLAINT

comes now the plaintiff, William L. Matheson, as executor of the will of Dorothy Gould Burns, deceased, by his attorneys, Patterson, Belknap & Webb. and avers as follows:

AS AND FOR A PIRST CLAIM

- 1. This is an action for the recovery of Internal Revenue taxes alleged to have been erroneously, illegally and improperly assessed and collected from the plaintiff.

 Jurisdiction is founded upon the provisions of 28 U.S.C.,

 Section 1346(a)(1).
- 2. The plaintiff is the executor in the United States of the will of Dorothy Gould Burns, who died on July 5, 1969. The plaintiff was duly appointed as such executor by the New York County Surrogate's Court by a decree dated October 9, 1969.
 - 3. The plaintiff's decedent, said Dorothy Gould

Burns, filed a United States gift-tax return for the year 1966 with the District Director of Internal Revenue at New York, New York, and paid the tax shown to be due thereon in the amount of \$787.50. Said gift-tax return showed that during said year said decedent had made cash gifts in United States and French currencies totalling \$10,080.00.

- 4. During the entire year of 1966 said decedent was a nonresident of the United States of America, residing at "La Pauline," Aix-en-Provence, France, was not a citizen of the United States of America, having lost her United States citizenship on or about December 21, 1944, at which time she took an oath of allegiance to the Republic of Mexico and renounced all citizenship foreign to said Republic, including the citizenship of her country of origin, namely, the United States of America, and was not engaged in business in the United States of America.
- 5. A timely claim for refund of gift tax paid with respect to the year 1966 was filed by the plaintiff on April 14, 1970, with the District Director of Internal Revenue at New York, New York. A copy of said claim for refund is attached hereto as Exhibit A. On or about July 26, 1972, the plaintiff received notification of the disallowance of said claim. A copy of said notification is attached hereto as Exhibit B. However, the "official notice" referred to in said Exhibit B has never been received by the plaintiff.

6. As a result of the foregoing, the defendant has erroneously assessed and collected from the plaintiff's decedent a gift tax with respect to the year 1966 in the amount of \$787.50, which amount, together with interest as provided by law, is due and owing to the plaintiff from the defendant.

AS AND FOR A SECOND CLAIM

- 7. The plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 and 2 of this complaint, the same as if said paragraphs were set forth fully herein.
- 8. The plaintiff's decedent, said Dorothy Gould Burns, filed a United States gift-tax return for the year 1967 with the District Director of Internal Revenue at New York, New York, and paid the tax shown to be due thereon in the amount of \$1,160.42. Said gift-tex return showed that during said year said decedent had made cash gifts in United States and French currencies totalling \$11,042.50.
- 9. During the entire year of 1967 said decedent was a nonresident of the United States of America, residing at "La Pauline," Aix-on-Provence, France, and was not a citizen of the United States of America, having lost her United States citizenship on or about December 21, 1944, at which time she took an oath of allegiance to the Republic of Mexico and renounced all citizenship foreign to said Republic, including the citizenship of her country of origin,

namely, the United States of America, and was not engaged in business in the United States of America.

- with respect to the year 1967 was filed on April 14, 1970, with the District Director of Internal Revenue at New York, New York. A copy of said claim for refund is attached hereto as Exhibit C. On or about July 26, 1972, the plaintiff received notification of the disallowance of said claim. A copy of said notification is attached hereto as Exhibit B. Eowever, the "official notice" referred to in said Exhibit B has never been received by the plaintiff.
- 11. As a result of the foregoing, the defendant has erroneously assessed and collected from the plaintiff's decedent a gift tax with respect to the year 1967 in the amount of \$1,160.42, which amount, together with interest as provided by law, is due and owing to the plaintiff from the defendant.

AS AND FOR A THIRD CLAIM

- 12. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 and 2 of this complaint, the same as if said paragraphs were set forth fully herein.
- 13. The plaintiff's decedent, said Dorothy Gould Burns, filed a United States gift-tax return for the year 1968 with the District Director of Internal Revenue at New York, New York, and paid the tax shown to be due thereon in the amount of \$8,006.25. Said gift-tax return showed that

during said year said decedent had made cash gifts in United States and French currencies totalling \$40,740.06.

- 14. During the entire year of 1968 said decedent was a nonresident of the United States of America, residing at "La Pauline," Aix-en-Provence, France, and was not a citizen of the United States of America, having lost her United "tates citizenship on or about December 21, 1944, at which time she took an oath of allegiance to the Republic of Mexico and renounced all citizenship foreign to said Republic, including the citizenship of her country of origin, namely, the United States of America, and was not engaged in business in the United States of America.
- with respect to the year 1968 was filed on April 14, 1970, with the District Director of Internal Revenue at New York, New York. A copy of said claim for refund is attached hereto as Exhibit D. On or about July 26, 1972, the plaintiff received notification of the disallowance of said claim. A copy of said notification is attached hereto as Exhibit B. However, the "official notice" referred to in said Exhibit B has never been received by the plaintiff.
- 16. As a result of the foregoing, the defendant has erroneously assessed and collected from the plaintiff's decedent a gift tax with respect to the year 1968 in the amount of \$8,006.25, which amount, together with interest

as provided by law, is due and owing to the plaintiff from the defendant.

entered in his favor against the defendant on the first claim herein in the sum of \$787.50, together with interest thereon, on the second claim herein in the sum of \$1,160.42, together with interest thereon, and on the third claim herein in the sum of \$8,006.25, together with interest thereon, and that the Court grant to the plaintiff such other and further relief, including costs and disbursements, as may seem just and proper.

Dated: New York, New York June / , 1974

PATTERSON, BELKNAP & WEBB

A Member of the Firm

Attorneys for Plaintiff 30 Rockefeller Plaza New York, New York 10020 212-541-4000

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EXHIBIT A--CLAIM, 1966 ANNEXED TO COMPLAINT (74 CIV. 2437)

					//
Form 8/43 (Rev. Juno 1978) U.S. Triosury Dupartirent Internal Revenue Service		Claim	t .		Director's Stamp (Date received) .
The Internal Revenue Servi	ice will indicate in the	block below the kind of claim fo	iled, and fill in,	where required.	
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		ps Unused, or Used in Error			
_					
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		Please Type or P	rint Flainly		
Name of texpayer or purch	aser of stamps				
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Number and straet				ite, and ZIP code	
Room 4701,	277 Park /	Avenue	llew Y	ork, M. Y.	10017
		in applicable items—us			
a. Your social security nu		number, if joint return		identification number	(if any)
074 38	3904		13-	6303920	
c. Internal Rovenue Servi	ce office where re-	d. Name and address shown			
turn (if any) was filed					m L. Matheson
Mew York, 1		277 Park Aven	ue, New	York, H.Y.	. 10017
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Anuda	19	70		Executor	
Dated April	13 19		***************************************		
		SEE INSTRUCTION	S ON HEVER		Form 843 (Rev. 6-68)

Δ 19

EXHIBIT B--LETTER DATED JULY, 1972 ANNEXED TO COMPLAINT (74 CIV. 2437)

	PO. 2002, JIK	20	Boston, Mass.	02703
:	300 U.S. Court	Hause	Buttale, H.Y.	14202

3 1221 Chapel St., New Haven. Conn. DG511

4 P.O Des 74'4. Church St Sta.

Department of the Treasury

Address any reply to APPELLATE DIVISION at Office No. 1

Regional Commissioner
Internal Revenue Service
North-Atlantic Region

.1111. 7 ; 1972

AP:NY:HKT



William L. Matheson, Executor
277 Park Avenue
New York, New York 10017

Dear Mr. Matheson:

In re: Federal Gift Tax Liability
Tax Periods Ended: December 31, 1966, 1967 and 1968

We have closed this case on the basis agreed upon and are sending the case file to the Service Center. The paragraphs checked below provide additional information.

- The Service Center will adjust the account and compute interest required by law. If an additional amount is due, a bill will be sent. If there is a refund, a check will be mailed.
- 'X' The Service Center will mail an official notice of full expartich disallowance of the claim for refund.
- An official notice of full or partial disallowance of claim for refund will not be sent because a waiver, Form 2297, was signed.
- No further action need be taken because there is no deficiency or overassessment.
- This is your notice of termination of Appellate Division consideration referred to in consent Forms 872-A for tax years ended

Sincerely yours.

Acting Assistant Chief Appellate Franch Office

cc: Mr. Herbert H. Chaice Patterson, Belknap &Webb 1 Wall Street New York, New York 10005

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EXHIBIT C--CLAIM, 1967 ANNEXED TO COMPLAINT (74 CIV. 2437)

(fier. 1/40 1558)								
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EXHIBIT D--CLAIM, 1968 ANNEXED TO COMPLAINT (74 CIV. 2437)

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		ps Unused, or Used in Error or Excess.				
		applicable to income, estate or gift taxes).				
		Please Type or Print Plainly				
Name of taxpayer or purcha						
		(deceased 7/5/(c)) 1107 14an				
Room 4701, 2		:				
	Fill	in applicable items—Use attachments if neces	sary			
a. Your social security num	ber Wife's	number, if joint return b. Employer identificat				
074 : 38 : 39		1 13-630302				
c. Internal Revenue Service turn (if any) was filed	office where re-	The state of the s				
Hew York, He	Hew York, Hew York Dorothy Gould Burns, c/o William L. Matheson 277 Park Avenue, New York, N. Y. 10017					
		prepare separate form for each taxable year 1. Kind of	, N. Y 10017			
		C. toDec1 19 _68				
g. Amount of assessment	19.0	Dates of payment	Gift Tax			
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A 22 ANSWER (74 CIV. 2437)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLIAM L. MATHESON, :
Executor of the Will of
DOROTHY GOULD BURNS, Deceased, :

Plaintiff, :

-v- : ANSWER

UNITED STATES OF AMERICA, : 74 Civ. 2437 (KTD)

Defendant. :

The defendant, United States of America, by its attorney, Paul J. Curran, United States Attorney, Southern District New York, for its answer to the Complaint herein, alleges as follows:

- 1. Denies each and every allegation of paragraph

 1 except admits that plaintiff brings this action purportedly

 under the jurisdictional provision of 28 U.S.C. § 1346(a)(1).
 - 2. Admits paragraphs 2, 3, 5, 8, 10, 13 and 15.
- 3. Denies each and every allegation contained in paragraphs 4, 6, 9, 11, 14 and 16.

FIRST DEFENSE TO ALL CLAIMS

4. Dorothy Gould Burns, throughout her lifetime remained a native-born citizen of the United States.

SECOND DEFENSE TO EACH CLAIM

5. Dorothy Gould Burns and the plaintiff as her

successor and representative are barred by the doctrine of collateral estoppel from taking the position that Dorothy Gould Burns was expatriated in 1944 by virtue of the formal determination in 1953 by the Passport Office of the United States Department of State that she was not expatriated in 1944 and remained a citizen of the United States.

THIRD DEFENSE TO FACE CLAIM

6. Forothy Goald Burns and the plaintiff as her successor and representative are barred by the doctrine of equitable estopped from taking the position that Dorothy Goald Burns was not a citizen of the United States since she continually held herself out as a U. S. citizen to agencies of the U. S. Government which issued her passports and licenses, to agencies of the French government and to every other person or entity who asked her about her nationality and since she benefited throughout her lifetime by virtue of her claimed U. S. citizenship.

FOURTH PUFLISE TO FACH CLAIM

7. Dorothy Gould Burns and the plaintiff as her successor and representative are harred by the doctrine of laches from taking the position that Lorothy Gould Burns was not a citizen of the United States.

WHEREFORE, the defendant demands judgment dismissing the Complaint plus the costs and disbursements of defending the action, and such other and further relief as may be deemed just and proper.

Dated: New York, New York

July 30, 1974

PAUL J. CURRAN United States Attorney for the Southern District of New York Attorney for Defendant

By:

MEL P. BARKAH
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6537

TO: PATTERSON, BELKEAP & WEBB, ESQS.
30 Rockefeller Plaza
New York, New York 10020

OPINION OF JUDGE DUFFY GRANTING CONSOLIDATION AND AWARDING SUMMARY JUDGMENT

DISTRICT ..

UNITED STATES DISTRICT CONSOUTHERN DISTRICT OF NEW Y		x S	MAY 9 1975 S. D. OF N. Y.
UNITED STATES OF AMERICA,		:	
	Plaintiff,	:	
-v-		:	73 Civ. 2011
WILLIAM L. MATHESON, Executof the Will of Dorothy Con Burns, Deceased,		:	#42309
	Defendant.	:	
		x	OPINION
WILLIAM L. MATHESON, Executor of the Will of Dorothy Gorburns, Deceased,		:	
	Plaintiff,	:	
-v-		.:	74 Civ. 2437
UNITED STATES OF AMERICA,		:	
	Defendant.	:	
		x	

APPEARANCES:

HONC MBLE PAUL J. CURRAN
United States Attorney
Attorney for Plaintiff
By: Mel. P. Earkan, Esq.
Assistant United States Attorney
Of Counsel

2.

PATTERSON, BELK AP & WEBB Attorneys for Defendant By: Herbert H. Chaice, Esq. Of Counsel

KEVIN THOMAS DUFFY, D.J.

Both the plaintiff, the United States, and the defendant, William L. Matheson as executor of the estate of Dorothy Gould Burns, have moved for summary judgment in the first action by the government to recover an income tax refund of \$10,790.99 made to Mrs. Burns' estate (73 Civ. 2011). Additionally, the government has moved to consolidate a related case (United States v. Matheson, 74 Civ. 2437 (KTD)) in which Mr. Matheson, as executor, has challenged a determination by the Internal Revenue Service that the Burns estate is not entitled to refunds of close to \$10,000 in gift taxes paid by Mrs. Burns in 1966, 1967 and 1968. Mr. Matheson's only objection to such a consolidation was on the grounds that he would be limited in discovery which he sought in the other suit. However, the document, a report from the Mexican Ministry of

3.

Foreign Relations, which was at the core of this objection has since been turned over by the government and Mr. Matheson's objection is therefore obviated.

Because the issues raised in the related action between the same parties are identical to those raised in the instant case, the motion to consolidate the two cases will be granted, and my ruling on the motions for summary judgment will be dispositive of both cases. It is also noteworthy that a proceeding brought by Mr. Matheson in the United States Tax Court to challenge the Internal Revenue's assessment against Mrs. Burns' estate of approximately 3-1/2 million dollars in estate tax deficiencies has been stayed pending the outcome of the cases at hand.

The basis on which the income tax refund was made and other tax refunds have been claimed is that Mrs. Burns allegedly expatriated herself from the United States in 1944. The underlying facts are not materially disputed.

Dorothy Gould Burns, born in 1904 in the United States, lived abroad in Europe from 1919 to 1941 during which time she married a Swiss nobleman and bore with him two

4.

daughters. When that marriage did not work out in 1934 Mrs. Burns, whose 1919 passport had expired, returned briefly to the United States on the basis of an affidavit in lieu of passport issued by the American Consulate in Paris, France. Her application for a passport was rejected and Mrs. Burns was apparently incorrectly informed that her marriage and extended residence abroad constituted presumptive loss of U. S. citizenship which could be regained only by naturalization. She did not undertake such naturalization proceedings and returned to Europe where in 1936 she was divorced from the Swiss nobleman. Thereafter, she lived abroad and used another affidavit in lieu of a passport in her travels until 1940 when she sought to leave Europe. The German invasion of France had prompted Mrs. Burns' departure, but she was denied entry into Portugal (her intended point of departure) because she lacked a passport. The Department of State, through the American Consultate in Spain, then granted Mrs. Burns'aapplication for a passport for the limited purpose of passing through Spain and Portugal to the United States. The passport expired in November, 1940. In the year 1941 Mrs. Burns left the United States for

5.

Cuba where she met Mr. Burns, a native Mexican of Scottish ancestry, who was to become her second husband. In 1942 the two went to Mexico where in May, 1944, they were married. A third daughter was born to Mrs. Burns of this marriage. In December, 1944 Mrs. Eurns executed an application for a certificate of Mexican nationality. The certificate was granted.

It is the execution of this application for a certificate of Mexican nationality which the executor claims expatriated Mrs. Burns from the United States. The government on the other hand contends that the application was not expatriating either in fact or in Mrs. Burns subjective intent. Moreover, the government argues that the estate is estopped from claiming such an expatriation.

The actual application for a certificate of nationality will be discussed infra; however, the events following the execution of the 1944 application are essential to an understanding of the various claims and will be reviewed first.

In 1946, Mrs. Burns applied to the Mexican government

6.

for the immigration of her oldest daughter, Rolande, as the daughter of a Mexican national.

In 1947 Mrs. Burns, although in possession of a Mexican passport, applied for a United States passport. In this application she made no mention of her application for a certificate of Mexican nationality and misstated her husband's citizenship as British, rather than Mexican. The passport was granted and repeatedly renewed, even after Mrs. Burns revealed that her husband was, in fact, a Mexican and after the State Department, on investigation, learned that Mrs. Burns had been issued a certificate of Mexican nationality.

In 1953 apparently Mrs. Eurns went to France to visit her ailing father. She remained in France for the rest of her life, becoming in 1956, the year of her father's death, a permanent resident of France. Mrs. Burns died in 1969. After the death of Mrs. Burns, the executor of her estate learned of her 1944 application for a certificate of Mexican nationality and based upon it filed claims for refunds of income and gift taxes for the years 1966-1968 and for an overpayment of estimated taxes in 1969.

the lawsuits consolidated herein were brought (1) by the government to recover the refund of 1966 income tax (refunds made for 1967 and 1968 have not yet been challenged by the government) and (2) by the executor to recover gift taxes for 1966, 1967 and 1968. As noted above, a proceeding by the executor in the Tax Court challenging the assessment of an estate tax deficiency of approximately 3-1/2 million dollars has been stayed pending the determination of this case since the identical issues are involved in both.

The application for a certificate of nationality which is at the center of this controversy was executed by Mrs. Burns in 1944. It was prepared in Spanish by a Mexican attorney, Francisco Liguori, and reads in pertinent part:

"I herewith formally declare my allegiance, obedience and submission to the laws and authorities of the Republic of Mexico; I expressly renounce all protection foreign to said laws and authorities and any right which treaties or international law grant to foreigners, expressly furthermore agreeing not to invoke with respect to the government of the Republic any right inherent in my nationality of origin." (From a translation certified as recurate by the Lawyer's & Merchant's Translation Bureau).

The executor of Mrs. Burns' estate repeatedly characterizes this declaration as a renunciation of

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American citizenship. Both the government and the executor devote a substantial portion of their most exhaustive briefs arguing whether this declaration.

was in 1944, required by Mexican law.

Mexico's Nationality and Naturalization Law,
Article 2, as I find it, was amended as of December 31,
1949 to explicitly require of an alien marrying a
Mexican a renunciation of other citizenships and a
protest of allegiance to Mexico. According to Mr.
Matheson, this amendment was simply a codification of
a pre-existing requirement. It is his position that
women marrying Mexican citizens did not become Mexican
citizens themselves until they became naturalized by
applying for and receiving a certificate of nationality.

The government contends that such women became

Mexican citizens by operation of law upon contracting a

valid marriage with a Mexican citizen. Such declarations of

allegiance were, in the government's view, purely administrative requirements of the Mexican Foreign Kinistry,

not dictated by law.

The signficance of the differing interpretations of the Mexican law is that if citizenship were not acquired

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taken to procure citizenship and may indicate an intention to abandon United States citizenship. If, however, Mrs. Burns became a Mexican citizen inmediately upon marriage, then her application for a certificate of nationality can be seen as a routine act of a dual citizen availing herself of a perogative of her Mexican nationality. See Kawakita v. United States, 343 U.S. 717 (1952); Jalbucha v. Dulles, 254 F.2d 379 (3d Cir.1953).

The arguments developed by the parties as to whether the 1949 law merely restated or changed existing law are both very persuasive. However, a close reading of the pre-amendment statute indicates that even if it was necessary under the old law to apply for a certificate of naturalization, the oath required was merely an oath of allegience to Mexico, not an explicit renunciation of one's former country as required by the 1949 amendment. As such, the intent of the declarant, in this case Mrs. Burns, in making the oath is not explicit on the face of the application. This is true because an oath expressly renouncing United States citizenship, as is required by the 1949 amendment would leave no room for ambiguity as

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to the intent of the applicant. However, an eath of allegiance to Mexico, without more, by one believing herself already a Mexican citizen by virtue of marriage, could be merely descriptive of her status as a dual citizen of both Mexico and the United States. See Kawakitu v. United States, 343 U.S. 717 (1952); Jalburna v. Dulles, 254 F.2d 379 (3d Cir.1958) Tanaka v. I.E.S., 346 F.2d 438, 448 (2d Cir. 1965) (Maufman, J., dissenting).

In fact, the oath taken by Mrs. Burns contained just such a declaration of allegiance to Mexico, but contained no renunciation of her United States citizenship. The only language which is even susceptible of misinter-pretation as a "renunciation" of United States citizenship is that portion of the declaration in which Mrs. Burns:

"renounc[ed] all protection foreign to said laws and authorities [the laws and authorities of Mexico] and any right which treaties or international law grant to foreigners, expressly furthersore agreeing not to invoke with respect to the government of the Republic any right inherent in my nationality of origin."

However, it is a recognized fact of international law that a dual national is never entitled to invoke the protection or assistance of one of the two countries while within the

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other country. See <u>Mishikawa</u> v. <u>United States</u>, 356

U.S. 129, 132 (1958); <u>Kawakita</u> v. <u>United States</u>, 343

U.S. 717, 733 (1952). Thus, by that part of the declaration Mrs. Burns forfeited no rights as an American if in fact she believed herself to be a dual national. In fact, the language quoted above tracks the language of the pre-1949 statute (Article 17 of the Mexican Nationality and Naturalization Law) which was altered by the December 31, 1949 law to require an express renunciation of the declarant's nationality of origin.

It becomes then, crucial to look to Mrs. Burns' intent in executing the application for a certificate of nationality. An oath of allegiance to another sovered will not be construed as expatriating without proof of subjective intent to renounce United States citizenship. See Afroyim v. Rusk, 387 U.S. 253 (1967); King v. Rogers, 463 F. 2d 1188 (9th Cir. 1972); Tanaka v. I.N.S., 346 F. 2d 438, 448 (2d Cir. 1965).

On the question of Mrs. Eurns' subjective intent in applying for the certificate of nationality there is considerable evidence that she believed herself to be a

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dual citizen of the United States by birth and of Mexico automatically by marriage. Mrs. Burns' attorney at the time of the application, Francisco Liguori, stated in his deposition that upon marriage she became a Micricon "as a matter of law" and that the certificate was merely a recognition of that fact by the ministry of Foreign Relations. In numerous documents, including a 1953 application for a United States passport. Mrs. Burns reiterated the fact that her Mexican citizenship existed by virtue of her marriage to a Mexican. The certificate of nationality itself recites that "she acquired the Mexican nationality as of the date of her marriage." Even Mr. Watheson's first affildavit in support of the motion for summary judgment contains an admission that upon ber marriage Mrs. Burns became a Mexican citizen, although he later argues that such a theory is unknown to Mexican law. The fact that Mrs. Burns had, years ealier, been erroneously informed that she had lost her U.S. citizenship by virtue of her marriage to a Swiss Baron is irrelevant since she had subsequently applied for and received a United States passport.

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It is clear from the record that Mrs. Burns applied for the certificate (1) so that her daughter, Relande, could immigrate to Mexico as a preferred immigrant with a Mexicon parent and (2) in order to obtain a passport since a Mexican citizen could neither leave nor enter the country without one, and a certificate was necessary for the acquisition of a passport.

There is also considerable argument by the parties about Mrs. Burns' facility in the Spanish language and thus her understanding of the oath. However, her executor's insistence that she was fluent in Spanish is accepted. This being so, Mrs. Burns must have understood that the words in the oath, as discussed above, contained no renunciation of her United States citizenship. For this reason the oath will speak for itself since, as Mr. Matheson himself argues, she was bound by the contents of a document she signed. The oath itself overcomes the ambiguous testimony of Francisco Liguori at his deposition. According to Mr. Matheson's understanding of the testimony, Liguori told Mrs. Burns some 30 years ago that by executing the application for a certificate, she was renouncing her American citizenship. It is unclear

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Rather, his testimony must be read as saying that he merely restated the oath to Mrs. Burns, explaining that she was forfeiting the protection of all foreign countries against Mexico.

Mr. Matheson cites numerous cases in which American citizens lost their American citizenship by becoming naturalized citizens of other countries. See, e.g., Savorgnan v. United States, 338 U.S. 491 (1950); King v. Rogers, 463 F. 2d 1188 (9th Cir. 1972). However, in Savorgnan, which was incidentally pre-Afroyim, the individual explicitly renounced here. United States citizenship as a pre-condition of her pararalization as an Italian citizen. Likewise in King, the plaintiff demonstrated that he had the requisite intent for loss of citizenship when he became a British subject and informed the American Consulate that he was willing to make a formal renunciation.

These cases are clearly distinguishable from Mrs. Burns' case in which there was no explicit renunciation; the subjective intent to expatriate herself was lacking; and her citizenship was apparently by operation of law—not by naturalization undertaken by Mrs. Burns. To be sure the

Mexican law species of women marr, ng Mexicans as naturalized Mexican citizens; but this is a semantic argument. The weight of the proof indicates that Mrs. Eurns acquired Mexican citizenship upon marriage and that the application for and issuance of the certificate constituted an additional formality executed for, as the certificate itself states, "legal use which may be convenient..." This was no renunciation process as in the cases cited above.

Finally, on the question of intent, the subsequent acts of the now deceased line. Burns have to be probative. See <u>Revokita</u> v. <u>United States</u>, 343 U.S. 717 (1952) wherein a single application for a U.S. passport after the allegedly expatriating act was considered on the question of intent. After applying for and receiving a certificate of Mexican nationality, Mrs. Burns repeatedly applied for and received United States passports; paid United States income and gift taxes as a citizen; represented to French authorities that she was an American citizen; and even sailed a pleasure boat under an American flag and a license issued upon her certification that she was a citizen

of the United States. Certainly, all of these actions are consistent with and compel the conclusion that Mrs.

Burns intended to remain and believed herself to be a

United States citizen.

The executor argues that Mrs. Burns did not believe a profession for the profession of the control of herself to be a United States citizen. Desiring the comfort and convenience of travelling on an American passport, she allegedly lied in her passport applications by representing herself as an American citizen and, in one application, representing her husband to be a British, rather than a liexican, subject. Moreover, the executor argues that such a misstatement taints the credibility of her other representations in applications for United States passports. If this is true, then the government must succeed on its alternative theory of equitable estoppel. The executor of Mrs. Burns' estate stands in the same position as the deceased would were she a party to this litigation. See Simons v. United States, 333 F. Supp. 855 (S.D.N.Y.) aff'd on other grounds, 452 F.2d 1110 (2d Cir. 1971); Kurz v. United States, 156 F. Supp. 99 (S.D.N.Y.), aff'd 254 F. 2d 811 (2d Cir. 1957). Mrs. Burns' repeated lies (accepting arguendo that characterization of her statements)

17.

to the government that she was an American citizen, estop her estate from now claiming that she was not an American citizen, and that her income and gift taxes should be refunded.

The executor attempts to counter that an estoppel argument is unavailable to the government since it neither relied on Mrs. Burns' misstatements nor suffered any detriment. This contention of no reliance is based on the fact that the government eventually learned that Mrs. Burns had been issued a certificate of nationality and knew that it was the policy of the Mexican government to require an oath of the applicant before issuing such a certificate. However, the United States government consistently believed, and there is a multitude of documentary evidence on this, that, despite any subsequent conflict in the interpretation of Mexican law, such an oath was an administrative requirement not to be construed as expatriating. This being so, the knowledge that the certificate had been issued in no way procluded the government's reliance on the representations of Mrs. Burns that she was an American chizen.

As to whether the government suffered any detriment,

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based upon fraudulent representations must clearly be seen as detramental reliance which will support an estoppel. See Simons v. United States, 333 F. Supp. 855 (S.D.N.Y.), aff'd on other grounds, 452 F. 2d 1110 (2d Cir.1971). The contention by the executor that it was the United States which, by the receipt of Mrs. Burns'taxes, was unjustly enriched merits no comment. As was said by Mr. Justice Douglas in Kawakitaa supra, "one cannot turn it [American citizenship] into a fair-weather citizenship..." 343 D.S. at 736.

There being no disputed material facts, either of the two theories set out above supports andaward of summary judgment in favor of the United States. Either the oath did not constitute a renunciation by Mrs. Burns of her American citizenship and she was a dual national, or her conduct in misrepresenting herself as an American citizen estops the executor of her estate from claiming otherwise. It is unnecessary to reach the merits of the government's collateral estoppel argument.

Dated: New York, New York

MAY 8 1975

43

DEFENDANT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -12cen 7/18/13

UNITED STATES OF AMERICA.

Plaintiff, : NOTICE OF MOTION AND MOTION FOR

-v-

: ORDER PURSUANT TO F.R.C.P. RULE 56

WILLIAM L. MATHESON, Executor of the : Estate of Dorothy Gould Burns, Deceased,

73 Civ. 2011 KTD

Defendant.

SIR:

PLEASE TAKE NOTICE that on the 26th day of June 1973, at 2:15 P.M., or as soon thereafter as counsel may be heard, the undersigned will move the United States District Court, at the United States Court House, Foley Square, New York, New York, for an order pursuant to F.R.C.P. Rule 56, granting to the defendant in the above-entitled action summary judgment and such other and further relief as to the Court may seem just and proper.

The motion will be based on this Notice of Motion and Motion, the annexed affidavit of William L. Matheson, sworn to on June 12, 1973, the annexed affidavit of Herbert H. Chaice, sworn to on June 13, 1973, the annexed copy of plaintiff's amended complaint, the annexed copy of defendant's Defendant's Notice of Motion for Summary Judgment

amended answer, and defendant's memorandum of law in support of said motion.

Dated: New York, New York June 14, 1973

Yours, etc.,

PATTERSON, BELKNAP & WEBB

By Herbert H Chaice
A Member of the Firm

Attorneys for Defendant Office & Post Office Address One Wall Street New York, New York 10005 WH 3-1300

TO:

WHITNEY NORTH SEYMOUP, JR., ESQ.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States Court House
Foley Square
New York, New York 10007

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AFFIDAVIT OF WILLIAM L. MATHESON IN SUPPORT OF DEFENDANT'S MOTION

UNITED	ST	ATES	DIST	RIC	T CO	URT
SCUTHER	IN	DISTR	ICT	OF	NEW	YORK

UNITED STATES OF AMERICA,

Plaintiff, : AFFIDAVIT IN SUPPORT

OF MOTION FOR SUMMARY

JUDGMENT

-V-

WILLIAM L. MATHESON, Executor of the : 73 Civ. 2011 Estate of Dorothy Gould Burns,

KTD

Deceased.

Defendant.

STATE OF NEW YORK 88 .: COUNTY OF NEW YORK

WILLIAM L. MATHESON, being duly sworn, deposes and says:

- 1. I am the executor of the will of Dorothy Gould Burns, who died domiciled in France on July 5, 1969, and whose will and codicil were admitted to probate by the Surrogate's Court of New York County as directed by said codicil on October 9, 1969, and I am the defendant in the above-entitled civil action. I make this affidavit in support of the defendant's motion for summary judgment.
- 2. This motion is predicated on a single document executed by Mme. Burns in Mexico on or about December 21, 1944, wherein and whereby she took an oath of allegiance to the Republic of Mexico and renounced all citizenship foreign to said Republic, including the citizenship of her country

of origin, namely, the United States of America. However, this affidavit will set forth summarily biographical information relating to Mme. Burns so that the Court may have a better understanding of the circumstances involved. If this Court agrees with my understanding of the legal effect of said document, most of the facts recited herein become irrelevant to the proper disposition of this motion and, therefore, do not create any triable issues of fact. If, however, the Court does not agree with my understanding of the legal effect of said document, triable issues will exist and the motion must, of necessity, be denied.

- Burns, as friend and counselor, and some of the facts set forth herein are derived from my own personal knowledge. However, most of the facts are based on my conversations and correspondence with her prior to her death and on the file of the Passport Office of the Lepartment of State. For the sake of brevity, the words "upon information and belief" will not constantly be inserted, and it may be assumed that the entire affidavit is on information and belie, although, as indicated above, some of the facts were gained from first-hand knowledge.
- 4. Mme. Burns was born in New York State in 1904 and resided there until 1919. In that year she departed from the United States to join her mother in Europe and to attend school in Switzerland. Thereafter, she never returned

A 47 Affidavit of William L. Matheson

to the United States except as an occasional visitor for brief periods. On May 5, 1925, she was married in Switzerland to Baron Roland de Graffenreid, a Swiss citizen, and she resided with him in Europe until at least September of 1934. Two daughters were born of this marriage. During the period of the marriage she assumed the title of Baroness de Graffenreid de Villars. Her last United States passport prior to 1934 was issued to her in 1919 before her departure for Europe. Thereafter, and until September 12, 1934, she never applied for such a passport.

- United States, apparently on the basis of an "affidavit in lieu of a passport" issued by the American Consulate in Paris. France, and on September 12th made application for a United States passport. She was advised on September 25, 1934, that under the law as it existed and was then applicable to her, she had lost her citizenship and could only reacquire 't by virtue of a special naturalization proceeding. Promptly thereafter, she left the United States without instituting such proceeding.
- 6. In May of 1936 she was divorced from her husband, and on October 6, 1936, under unexplained circumstances, she obtained from the American Consul General in Paris, France, another "affidavit in lieu of a passport."

 Thereafter, she resided in France and elsewhere outside the United States.

Affidavit of William L. Matheson

- 7. Because of the German invasion of France, she tried to flee Europe in 1940, but made her way only to Spain. She attempted to enter Portugal for the purpose of going to the United States or South America, but was turned back from Portugal, because of the lack of a passport. On October 10, 1940, she made application at the American Consulate in Madrid, Spain, for a United States passport. Although the presumptive prior loss of her citizenship was known by the Consulate and the Department of State, because of the emergency situation and out of consideration for her desperate circumstances, she was given a limited passport for the purpose of passing through Spain and Portugal in transit to the United States on a non-belligerent vessel. The passport was to expire on November 30, 1940.
- 8. She reached the United States in early 1941 and thereafter promptly departed for Cuba, where she met her second husband, Archibald Burns, a native Mexican of Scotish ancestry. In 1942 she went to Mexico with him and on May 24, 1944, they were married. One daughter was born of this marriage.
- 9. As a matter of Mexican law then in effect,
 Mme. Burns upon her marriage became a Mexican citizen.
 Weversheless, on December 21, 1944, she made an application
 to the Ministry of Foreign Affairs of the Republic of Mexico
 for a Certificate of Mexican Nationality, wherein and whereby
 she took an oath of allegiance to the Republic of Mexico and

Exhibit All Annexed to Ajjtaabit oj herbert h. charce

A 49 Affidavit of William L. Matheson

renounced all citizenship foreign to the said Republic, including the country of her origin, namely, the United States of America. A certified copy of her application, together with a certified translation thereof, is annexed hereto as Exhibit A and is hereinafter referred to as "said document." Her application was approved on January 2, 1945, and, thereafter, she was issued a Certificate of Mexican Nationality and a Mexican passport.

10. On May 2, 1947, she made application the American Consulate in Mexico City for a United States passport in which she made no mention of the fact of her presumptive loss of citizenship prior to 1934 or of the existence of said document and the oath of allegiance and renunciation contained therein. Apparently, without checking Mme. Burns's file, the Passport Office issued a passport to her on May 21, 1947, which was renewed on April 7, 1949. On March 30, 1951, she made an application for a further extension in which the fact of her Mexican citizenship was revealed, but the existence of said document was not disclosed. Pending an ultimate determination, and upon her assertion that she would proceed to the United States in October of 1951, her passport was extended for six months. The passport was subsequently extended for brief periods until March 29, 1953. As a result of an application which she made on May 6, 1952, for a further extension of her passport, communications were had between the American Embassy in Mexico and the Mexican MinisBurns had taken in acquiring her Mexican citizenship. However, for reasons which are nowhere explained, our Embassy never asked, and the Mexican Ministry never voluntared, whether Mme. Burns had ever executed any document in which she affirmatively had taken an oath of allegiance to the Republic of Mexico or had renounced allegiance to countries other than Mexico. Finally, the Passport Office, being under the impression that Mme. Burns acquired her Mexican citizenship solely by virtue of her marriage to a Mexican citizen and that she had not taken any affirmative action to renounce her United States citizenship and being unaware of the actual facts in this regard, authorized the further extension of her passport, which was thereafter reissued and extended from time to time until her death.

- 11. In 1953, having become separated from her husband and because a serious illness had overtaken her father, who was then residing in the south of France, she returned to France and lived there continuously until her death.
- 12. Since at least 1956 Mme. Burns filed incometax and gift-tax returns as if she were a United States citizen, listing my name and office address as her address. However, this was a small price to pay for the purpose of maintaining a United States passport, because her gifts were small and virtually all of her income consisted of tax-exempt

A 51 Affidavit of William L. Matheson

interest from municipal bonds. In fact, the total additional cost to her in the years 1966, 1967 and 1968 in filing her returns as a United States citizen was \$10,628.52 for income-tax purposes and \$9,954.17 for gift-tax purposes.

tance of one of her daughters, who is a citizen and resident of the Republic of Mexico, I discovered the existence of said document. On the basis thereof, I filed claims for refunds for income taxes and gift taxes for the years 1966 through 1968, the only ones which were still open. The refund for the 1966 income tax was granted and is the subject matter of this civil action. The other claims for refunds are still being processed by the Internal Revenue Service.

of allegiance to the Republic of Mexico and renounced all citizenship foreign to that Republic. Thereafter, she never went through a naturalization proceeding before an appropriate United States court. Her acts of paying United States income taxes and gift taxes since 1956 and the acts of the Passport Office in issuing passports to her could not have conferred United States citizenship upon Mme. Burns.

WHEREFORE, I respectfully request that this Court determine that Mme. Burns lost her United States citizenship by making the oath of allegiance to the Republic of Mexico and renouncing all other citizenship, grant the defendant's

A 52 Affidavit of William L. Matheson

motion for summary judgment and dismiss this action in all respects.

William L. Matheson
William L. Matheson

ing tradett of herbert h. charce

Sworn to before me this

12th day of June , 1973.

Genevieve M. Althenn

Genevieve M. Althenn Notary Public, State of New York No. 30-0054015 Qualified in Nassau County Commission Expires March 30, 1975

(Notarial Seal)

Dantott XII Annewed to Affication of herbert h. Charce

A 53

EXHIBIT A--APPLICATION FOR CERTIFICATE OF MEXICAN NATIONALITY (ENGLISH TRANSLATION) ANNEXED TRANSLATION TO AFFIDAVIT OF WILLIAM L. MATHESON

from: Spanish WB: hob

7:77 - 115

JOSE LIGUORI, JR.
Attorney-at-Law
V. Carranza 44 Desps. 100-101
Mexico, D.F.

To the Secretary of Foreign Affairs Legal Department

I, Dorothy Gould Burns, of U.S. rationality, married, with domicile for receipt of services and notices at Office 101, Building 44, Calles de Venustiano Carranza, in this city, respectfully appear and declare:

That I request that you issue to me a certificate of Mexican nationality, in view of the fact that I have my residence in the territory of the nation, as proven by the enclosed certificate, and that I contracted marriage on May 24th of the present year, as proven by the corresponding certificate, to Mr. Archibaldo Burns, of Mexican nationality, in accordance with the birth certificate which I also submit herewith.

Therewith formally declare my allegiance,
checience and submission to the laws and authorities of the
Republic of Mexico; I expressly renounce all protection foreign
to said laws and authorities and any right which treaties
or international law grant to foreigners, expressly furthermore
agreeing not to invoke with respect to the Government of the
Republic any right inherent in my nationality of origin.

Under oath, I declare that I have no title of nobility to waive, but assuming that without my knowledge.

Exhibit All Annexed to Affidavit of Herbert H. Chaice

A 54

Exhibit A Annexed to Affidavit of William L. Matheson

TRANSLATION

-2-

from:

I should have any such right, I herewith formally waive same whatever its origin.

I enclose revenue stamps in an amount of Pesos 25.00 ordinary stamps and Pesos 2.50 for the additional 10%, as well as two full face photographs of myself, small size, for the certificate to be issued.

I furthermore declare that I owe no Federal Income Tax and submit furthermore the documents which I have in my possession from the Department of the Interior.

In view of the foregoing and pursuant to
Subdivision II, of Article 2 of the Nationality and Naturalization
Law, I respectfully pray that the Department of Foreign
Affairs:

- I. Admit the present request as written, in which I request the issuance of a certificate of Mexican nationality.
- II. Hold that the affirmations and waivers referred to in Articles 17 and 18 of the Nationality and Naturalization Law in force have been duly submitted.
- III. Hold that the annexes mentioned in the body of this instrument as well as the respective photographs and stamps have been duly submitted.
- IV. Declare that Francisco Liguori Jimenez, Esq. has been authorized to receive notifications in my name.
- V. In due time, issue to me the certificate requested.

Exhibit XII Annexed to Ajjidavit of herbert h. Charce

A 55 Exhibit A Annexed to Affidavit of William L. Matheson

Respectfully submitted.

Mexico, D.F., December 21, 1944

S/ Dorothy Gould Burns

EXHIBIT V--LETTER DATED JUNE 22, 1971 ANNEXED TO AFFIDA-VIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

In reply refer to rethy Gould Burns

JUN 2 2 1971

Mr. Charles M. Wilcox Associate Chief, Appellate Branch Office North-Atlantic Region, Internal Revenue Service, P.O. Box 2454 Church St. Station New York, N.Y. 10008

Dear Mr. Wilcox:

Reference is made to your letter of May 11, 1971 concerning the citizenship status of Mrs. Dorothy Could Burns, decessed.

Our record shows that Mrs. Burns acquired United States citizenship by birth in New York City on March 24, 1904.

Mrs. Durns' marriage on May 5, 1925 to Baron de Graffenreid, a Swiss citizen, did not cause her to lose citizenship, Section 3, Act of September 22, 1922, provided that an American woman would not be expatriated by marriage to an alien unless he was incligible to citizenship or she made a formal renunciation of citizenship before a naturalization court. There is no showing that she became expatriated under those provisions, which were repealed by the Act of March 3, 1931.

In 1953, it was determined that when she was married on May 24, 1944 to Archibald Burns, a Mexican, she acquired Mexican citizenship by operation of Mexican law. She did not, however, lose United States citizenship.

Between Saptember 22, 1922 and January 1, 1950, American women did not become expatriated by acquisition of Mexican citizenship upon marriage to a Mexican. Also, they did not expatriate themselves by making a declaration of allegiance to Mexico and renouncing former nationality administratively to obtain a Certificate of Mexican Citizenship.

These onths and declarations were not conctioned by Mexican regulations until January 1, 1950. Oaths taken subsequently are considered meaningful and expatriating.

This office was not aware of Exhibit A or any other eath of allegiance taken by Mrs. Burns in connection with her Mexican naturalization. In pravious cases of similar eaths taken by American women, the Mexican Poreign Ministry has stated that prior to 1950 any such eath was unnecessary and not prescribed by Mexican law. Consequently, we do not believe it will be necessary to request an advisory opinion from the Mexican authorities concerning Exhibit A, unless such an opinion is indispensable in this case.

A 57

Exhibit V Annexed to Affidavit of Herbert H. Chaice

The file of Mrs. Eurns, termed Exhibit B, in complete insofar as all documents relevant to her citizenship status are concerned. The words "operation of law" questioned in your letter are on the original document and were placed there during the 1953 citizenship determination.

After Mrs. Burns! Mexican insturalization, the continued to hold herself out as a United States citizen. Since it was determined in 1953 that she was not expatriated, further passport services were extended to her. Shortly before her death, she received a United States passport at Nice, France on February 28, 1953.

It is the opinion of this office that Mrs. Dorothy Gould Burns was a United States citizen when she died on July 5, 1969.

I hope the foregoing information is responsive to the questions posed in your letter.

Sincerely,

Frances G. Enight

76/ (---)

Director

Passport Office

Enclosure: Returned

Exhibit A

Exhibit B

PPT/FNS:CADiPlacido:jmp 6/17/71

EXHIBIT X--MEMO #588 ANNEXED TO AFFIDAVIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

10. 513

The Edward of the United States of America presents the compliments to the Secrements of Persign Relations and ins the hones to request the following information.

Handen Posterial of Poreign Helevista, it is the class of the Department of State that prior to Jerusny 1, 1070 the dealeration of allocates to United and remarkables of the other metionalities in competition with the applicables for a Cortificate of Mariem Nationality by an alies were the marked a Mariem national the not required by he or required a National the force of law and that it only become such a legal requirite, to be distinguished from an equiral traited traited procedure, upon the procedure of the acceptant of the Handen Inu of Nationality and Naturalization dated December 51, 1960.

The Reportment of State wichen to know whether the accombinant of Article'57 of the Abelian Law of Retionality and Unturalization, effective January I, 1950, is considered by the Secretariat to have retrocative effect in Understand Law upon declarations administered prior to that date in competion with the obtainment of Cartificaton of United

The beloney of the United Distance of Armsica availse though of this apportunity to many to the Societarian of Toroign Belondens the accurances of its highest and most distinguished consideration.

Hambon D.F., thy 5, 1972.

60 EXHIBIT XI--MEMORANDUM, LS NO. 41732-A ANNEXED TO AFFIDA-VIT OF HERBERT H. CHAICE DATED JUNE 6, 1974 DEPARTMENT OF STATE DIVISION OF LANGUAGE SERVICES (TRANSLATION) LS 110.

41732-A T-125/R-XXXVI Spanish

The Department of Foreign Affairs presents its compliments to the United States of America and has the honor to transmit to it the enclosed memorandum by which it replies to note 588 of May 3, 1972.

[Complimentary close.]

[Initialed]

Tlaltelolco, D.F., February 28, 1974

United States Embassy, Mexico City.

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EXHIBIT XII--MEMORANDUM, LS NO. 41732-B ANNEXED TO AFFIDA-VIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

LS No. 41732-1

Menorandua

- 1. In its note No. 588 of May 3, 1972, the Embassy of the United
 States of America states that the Department of State, on the basis
 of the information furnished it by the Department of Foreign Affairs,
 has formed the opinion that, prior to January 1, 1950, the declaration
 or affirmation of allegiance to Mexico and the renunciation of any nationality other than Mexican required of all alien women married to
 Mexicans before issuance of Mexican citizenship papers, were not requisities
 established by law and that the aforesaid declarations and renunciation
 did not become legal requisities until the date indicated, which was the
 date of the entry into force of the amendment of December 31, 1949 of
 Article 57 of the Nationality and Naturalization Law.
- 2. At the end of the above-mentioned note the Embassy transmitted the Department of State's request to be informed whether the Foreign Office considers that the aforesaid amendment has, under Mexican law, retroactive effects on declarations and renunciations made prior to January 1, 1950 in connection with obtaining citizenship papers.
- 3. It is not known to what information the Department of State may be referring as the basis of an opinion that differs from that of the Department of Foreign Affairs; what is called for, however, is a careful study of the basic problem of the legal force that may be attributed to the declarations and renunciations which are the subject of this correspondence rather than a discussion of the difference of opinion which has just been pointed out, appears to be which/of secondary importance. The following paragraphs see forth the official policy of the Mexican Government on that matter and provide the background and the reasons therefor.

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Exhibit XII Annexed to Affidavit of Herbert H. Chaice

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- 4. The Department of Foreign Affairs requires, and has required in the past, the above-mentioned declaration and remandation, pursuant to the provisions of: (a) Article 30(B, II) of the Constitution; (b) Articles 2(II), 20, and 57 of the Nationality and Naturalization Law in force; and (c) Article 1 of the Convention on Nationality, signed at Montevideo on December 26, 1933.
- 5. According to the aforesoid Constitutional provision, whose present text has been in force since January 18, 1934, alien women who are married to Mexicans and have or establish domicile within the Pational Territory are Mexicans by naturalization. This is the substantive rule applicable to the cases under consideration.
- 6. The Nationality and Naturalization Law has been in force since

 January 20, 1934. Originally Article 2(II) merely repeated the aforecited

 Article 30(B, II) of the Constitution. By the amendment of January 23, 1940,

 a sentence was added which reads as follows: "The Department of Foreign

 Affairs will make the pertinent decision in this case." Its present text,

 in force since January 1, 1950, after repeating the Constitutional provision

 referred to, contains the following addition: "Upon a request by the interested

 party, in which she verifies the renunciations and affirmations referred

 to in Articles 17 and 18 of this Law, the Department of Foreign Affairs shall,

 in each case, make the pertinent decision. An alien woman who acquires

 Mexican citizenship in this way shall retain it even after dissolution of

 the bond of matrimony." The essential part of this provision simply reproduces

 the text of Article 20 of the Law, in force since January 23, 1940. This

 latter provision alone resolves the problem under consideration. Indeed,

Exhibit XIV(a) Annexed to Affidavit of Herbert H. Chaice

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it is that provision which governs the case of alien women whose husbands acquire Mexican citizenship by naturalization after marriage. With regard to Article 57 of the Law, it is sufficient to say that it regulates the issuance of citizenship papers and it was naturally amended on the same date as Article 2(III), cited several times above.

- 7. With respect to the problem under consideration, it is important to emphasize that the Nationality and Naturalization Law is a regulatory statute of Article 30 of the Constitution. In Mexican law the regulatory statutes establish the manner of complying with the constitutional provisions they pertain to, and their principal characteristic is that they cannot in any way modify the provision for which they establish regulations. In the absence of a regulatory law, the competent authorities determine the system of application of the constitutional rule which, by its very nature, is limited to expressing principles or very general provisions without entering into procedural details. Consequently, it can be said that the purpose of regulatory laws is to circumscribe, insofar as is possible or advisable, the discretionary power vested in the authorities to apply or execute the provisions of the Constitution.
- 8. The aforesaid amendments of the Nationality and Naturalization Law are clear examples of the purpose of a regulatory law. The Department of Foreign Affairs, by issuing the Mexican citizenship papers, had been making the decision in each case in which an alien woman married to a Mexican became a naturalized Mexican. Nationality and naturalization affairs are, by express provision of the Law of Government Departments, within the Department's jurisdiction. It was considered advisable, however, that the regulation on jurisdiction appear in the Nationality and Naturalization Law to facilitate

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advice. Therefore, by means of the amendment of January 23, 1940, the practice that had been followed with regard to compliance with the provisions of Article 30(8, II) of the Constitution was confirmed. The amendments of December 31, 1949--that of Article 2(II) and that of Article 57 to which the Embassy refers in note 588--are of a similar nature. Principally for the reasons stated in paragraphs 11-13 of this memorandum, the Department had invariably required the affirmation of allegiance and the renunciation of any nationality other than Mexican in connection with the issuance of Mexican citizenship papers to an alien woman who, because she had married a Mexican, had a right to Mexican citizenship by naturalization; but, on the date indicated, by decree of the Congress, explicit expression was given to an implicit provision of Article 30(B,II) of the Constitution.

- 9. With respect to the amendments mentioned in the previous paragraph, perhaps it would not be superfluous to state that the right to Mexican citizenship by naturalization, to which an alien woman married to a Mexican is entitled, derives from the Constitution and not from the Nationality and Naturalization Law to which the Embassy refers in its note, and that this law only establishes regulations for execution of the aforesaid constitutional provision, but does not amend it in any way because in Mexico, as in the United States, an ordinary law of the Congress—in the case under consideration, the Nationality and Naturalization Law—cannot amend the Constitution.
- 10. Article 1 of the Convention on Nationality of December 26, 1933-the third-mentioned legal instrument in paragraph 4 of this memorandum---provides that: "Naturalization of an individual before the competent authorities
 of any of the signatory States carries with it the loss of the nationality

EXHIBIT XIV(e) -- LETTER DATED MAI 13, 1944 ANNEXED TO AFFIDA-

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of origin." The aforesaid convention was promulgated as Mexican domestic law by a decree of March 10, 1936.

- 11. The Mexican Government was pleased to approve the text transcribed above inasmuch as it had always maintained--and continues to maintain-that international law requires the States to seek to prevent dual nationality
 and that, when it is a question of nationality by naturalization, as in
 the case of alien women married to Mexicans, there can be no justification
 whatsoever for the occurrence of the problem of dual nationality that has
 been the origin of so many international disputes.
- 12. Indeed, citizenship acquired by naturalization, as opposed to citizenship acquired by birth, is the result of a bond of wills, that of State which grants the citizenship, and that of the individual acquiring it. The Mexican Government consequently considers that any procedure leading to the decision that an alien has become a naturalized Mexican necessarily becomes part of the acts which, pursuant to domestic law and the general principles of international law, entail the loss of the original or prior citizenship. Such acts are, in Mexican administrative law, precisely the affirmation and renunciation mentioned so many times above; the former is an essential factor not only because, according to most of the world's legal systems, it causes the loss of the nationality of origin, but also because it is the solemn act by which the person naturalized pledges the allegiance that is for the Government of Mexico the sine qua non of citizenship. The renunciation can be considered a safeguard, an additional requisite whose requirement emphasizes the importance that the Government places on avoiding even the possibility of the problem of dual nationality in naturalization cases.

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- 13. There are numerous preliminary data on this aspect of the problem. The most authentic is the debate that took place in the Constitutional Congress of Querétaro when the original text of Article 30 was discussed and approved. On that occasion Deputy Conzález Galindo stated that "...for a citizen to have two nationalities, one through the Constitution of Mexico and the other through the constitution of his country, is very dangerous." Deputy Colunga uttered the phrase that has been used since that time to summarize the Government's policy on the matter. It appears, for example, in one of the whereas clauses of the regulations of Article 57 of the Nationality and Naturalization Law that was in force from August 4, 1970 to October 18, 1972. The aforesaid member of the Constitutional Congress stated: "The principles that govern this matter are basically these two:

 An effort should be made so that an individual will not have two nationalities at the same time or remain without any." (Both quotations taken from the minutes of the sessions of January 19, 1917.)
- 14. Moreover, the Embassy of the United States in Mexico has, on numerous occasions, given the impression to the Department of Foreign Affairs that it understood the situation prevailing prior to January 1, 1950. Three specific cases are cited below as examples:

a. Leone Hoover Rosales.

In note 4115 of July 23, 1945, the Embassy requested the Department of Foreign Affairs to inform it whether Mrs. Rosales had been required to sign "a declaration of allegiance to Mexico and of renunciation of her allegiance to the United States" in connection with the issuance of certificate 745 or Mexican passport 8865. The Department replied by note 739 of August 21, 1945, the pertinent paragraph of which states: "On requesting her Mexican

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citizenship papers, the interested party, on June 8, 1945, made a written declaration of formal affirmation of adhesion, obedience, and submission to the laws and authorities of the Mexican Republic, binding herself not to invoke before the Covernment of the Republic any right inherent in her nationality of origin. ***

b. Geraldine McDowell Cruz.

In note 1027 of April 10, 1959, the Embassy asked the Department for information about whether "Mrs. Cruz took an oath of allegiance to Mexico in connection with her request for Mexican citizenship and, if so, the date of that oath."* The Department replied by note 783 of April 28, 1959 stating that Mrs. Cruz had submitted a written request on April 1, 1944 to be issued Mexican citizenship papers and that in that request she had made "formal assertion of adhesion, obedience, and submission to the laws and authorities of the Mexican Republic."*

c. Cristina Lee Moor Crespi Goddard.

Mrs. Goddard, holder of Mexican citizenship papers No. 947 of August 30, 1944, asked the Department of Foreign Affairs on September 19, 1952 for proof that she had taken an oath of allegiance to Mexico, basing her request on the fact that the United States Embassy had requested that she prove that she had taken such an oath. By official communication 716530 of September 23, 1952, the Department provided her with the proof. Her records also contain a communication dated March 6, 1953 from the Department of Foreign Affairs to the Department of Government in which the Foreign Office affirms that it had issued such proof "expressly in order for (Mrs. Goddard) to obtain a

Exhibit XII Annexed to Affidavit of Herbert H. Chaice
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visa in her Mexican passport from the Consulate of the United States of America."

- 15. In summary, the right to Mexican citizenship of alien women married to Mexicans has its origin in the provisions of Article 39(E, II) of the Constitution; that article implicitly provides, among other things, that the interested parties must affirm allegiance to Mexico and renounce the citizenship that they hold in order to begin the naturalization procedure. The requirement of the Department of Foreign Affairs that they make those affirmations and renunciations has been based and is based on that implicit provision, on the Nationality and Naturalization Law of January 20, 1934, and on the explicit text of Article 1 of the Convention on Nationality, signed December 26, 1933; the Nationality and Naturalization Law, as amended December 31, 1949, expresses the implicit provision referred to but, as a regulatory law of Article 30 of the Constitution, does not in any way amend the provisions of that Article. The renunciation of dual nationality is a traditional policy of the Mexican Government, which is provided by law with effective means of preventing the problem of dual nationality from occurring in naturalization cases. And, finally, the United States Embassy in Mexico has given the impression to the Department of Foreign Affairs that it gives full validity and credit to the aforesaid affirmations and renunciations made prior to January 1, 1950, the date in which the current text of Articles 2(II) and 57 of the Nationality and Naturalization Law entered into force.
- 16. It appears from the foregoing that the problem under consideration does not raise the problem of retroactive application of the amendment of the aforesaid Article 57 of the Nationality and Naturalization Law. Nevertheless,

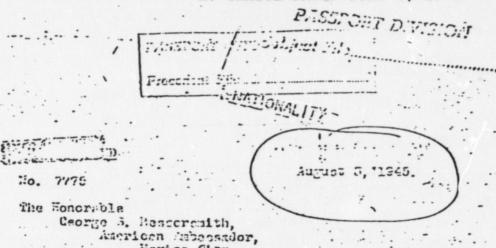
Exhibit XII Annexed to Affidavit of Herbert H. Chaice

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application would not be contrary to Mexican administrative law inasmuch as the provision governing retroactivity--Article 14 of the Constitution--prohibits laws to be given retroactive effect only "to the prejudice of some person."

Tlaltelolco, D.F., February 28, 1974

EXHIBIT XIV(b) -- LETTER DATED AUGUST 5, 1945 ANNEXED TO AFFIDAVIT OF HERBERT H. CHAICE DATED JUNE 6, 1974



Hexico City.

Sir:

The Department adverte to its instruction Wo. 5786 of June 1, 1944 seknowledging the receipt of your dematch No. 17047 of August 6, 1943, referring to the report dated Jenuery 8, 1942 purporting to show that Builleumo Sottil Frieto lost may clein which he may have hed to Ageriagn citizenship by waking a declaration of allegiance to Mexico. In that instruction the Department discussed the practice of the Mexican authorities in requiring declarations of allegiones to Pexico in connection with rectiones in Mexico or deporture from ar entry into that country and in other connections, in the cases of (1) persons who were born in the United Curtag of Merican - parents; (2) persons who were born in Mexico of American perents, and (3) American women who have been married to Mexican citizens. .

In its instruction of June 1, 1944 the Penerthant took the view that a person who was born in the United Etetes of Maxican parents and who accuired both American and Mexican notionalities at birth should not be concluered to have luct American nationality by making a declaration of the nature referred to in Article 17 of the Marican Law of January 5, 1934, sc, manded of Decomber 18, 1939. reason for this view was set forth downchensively in the instruction. In the communication of June 72, 1844 from the Ministry of Foreign Affairs concerning the case. of George Tirney Glbert it is edultted "that no legal provision exists in Mexican legiclation which requires of the interested parties & declaration of allegiance to the Covernment of Mexico nor is their Mexican netionality conditioned when any formal requirement whatever." statement had relation to persons burn in Nexten of American parents and to parsons born in the United States. of invicen perents.

In the case incorportion the Troppening by mesered that view that any person who wer born in Mexico of an Maricon father and who and not attained the age of tuentuente years wattl on or after Jenuary 5, 1974 is not resulted a under Pexicon law, or any regulation having the force of law, to wrke a declaration of allegiance to lexico of the us airc set forth in Article 17 of the Artican Law of Jenuary 5, 1984 - a chemied on Becember 10, 1982, and 17 such 25 AND THE RESERVE

"declaration

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declaration was administered to wim gratuitously he did not thereby lose American offermatin under the provisions of Section 2 of the Act of Carch 2, 1307-or Section 401(b) of the Mationality Act of 1940. The Department reducated, however, that you discuss this matter with the appropriate Hexican officials in order to assertain whether its view is accurate. That it is is indicated in the ecumunication of June 22, 1944 from the Pinistry of Poreian Affairs of Mexico acove mentioned. The view expressed in this pare raph will apply also to any person who was born in Mexico after noon E. 3. T. of May 24, 1934 of a Mexican or other alien father and an American mother who was qualified under Section 1893 of the Revised Statutes of the United States as smended by the Act of Mry 34, 1934 or -Section 201(g) of the Bationality Act of 1940 to transmit citizenship to a child born to her outside of the United States or its outlying poesessions. It will likewise apply to an illegitimate child who was born in Mexico at any time of a mother who had the nationality of the United States at the time of the .. child's birth and had previously resided in the United . States or one of its outlying possessions.

In its instruction of June 1, 1944 the Department discussed the legal situation with respect to American women who were narried to Maxlean citizens and who frequently have been required to make declarations of ellegiance to Mexico. The Department had sought for a number of years to obtain from the Mexican authoraties a definite and Unerulvoord statement whether there is say provision of Mexican law, or regulation having the force of law, requiring such women to make such a declaration. In despatch No. 21239 of Hovember 5, 1944 from your Embassy the following statement is made:

"The Ministry for Foreign Affairs has never replied to the Robersy's above-mentioned communication of June 20th, and when an officer from the Robersy took the matter up personally the with a member of the section of diplomatic affrire at the Foreign office recently, he was informed that it was doubtful whether the Ministry would ever give a ruling, as the requirement of a declaration of allegiance to Mexico is an administrative one which undoubtedly would not stand up before a court. It was recalled that this same opinion was voiced by another officer - in the diplomatic section at the Foreign office more than a year ago. "

With respect to the last sentence of the quatation 10 is . observed that in despatch No. 18047 of August 6, 1945 from your Cobresy in the case of Guillerno Cottil Printo you mise discussed the case of Junaita Thornson Booth Branch and in connection therewith made the following. statement: Comment to the second second

"Some months ago an officer of this dabeary discussed this phase of the sucction with mi official

Exhibit XIV(b) Annexed to Affidavit of Herbert H. Chaice - 3 -

official at the Foreign Office the stated confidentially that the procedure which the Ministry requires to be valid in such cases was an arbitrary one set up by the Finistry; that actually an American woman married to a Mexican citizen to entitled to Mexican citizenship by virtue of the Constitution and that if such a woman refused to subsit to the requirements of the Ministry and the Ministry should refuse to issue her a certificate of nationality, the could take the case to the Supreme Court and upon an order from that Court direct the Ministry to issue her a certificate of nationality. "

The Department has concluded that the quotations indicate that the requirement of the Mexican authorities that an . American vomen who is married to a Mexican make a declaration of allegiones to Herico is not one prescribed by law or regulation issued pursuent to law. The Decartment is compelled to the conclusion that the reluctonee of the Hexican Foreign Office to make a definite and . unequivocal atatement in the matter is obviously due to the fact that there is no such law or regulation. If no doubt that the Mexican authorities would have replied to the many communications which have replied to the many communications which have been addressed to them in the matter during the post several years cerinitely she unequivously stating that there was such a law or regulation and giving the text or a . reference to it. In the circumstraces the Department will not consider that any merican ucmen who was merried to a Mexican citizen on or after September 22, Mexico thereby lost her American citizenship.

As was pointed out in the Department's instruction of June 1, 1944 any person who was born in Mexico of an American father and who in order to acquire Mexican nationality fulfilled the conditions of any of the provisions of Mexican law quoted in the third paragraph
of that instruction is considered to Mayor been naturalized
in Mexico and in consequence to have lost American citizenship under Jection 2 of the Act of March ?, 1007 or
Section 401(a) of the Matienality Act of 1940, depending. upon the data when Mexican nationality was acquired.

To summerize:

The Department will hereafter held that an American citizen did not less American citizen-

- to Mexico in the enses of

 (1) persons who were born in the United

 States of Maxicon parents;

 (2) persons who were born in Mexico of

 American fathers and the attained the are of

 thenty-one years subground to January 5, 1986; // tuenty-one years subground to January b, 1986; 1
 - A order a college and release factor or often

Exhibit XIV(b) Annexed to Affidavit of Herbert H. Chaice

efter neon 7.3.7. of May 24, 1374 if the nothers were outlified under Protion 1985 of the Pavisod Statutes of the United States at exceeded by the Set of May 24, 1234, or Section 201(g) of the Vationality Act to transit citizanship to their children born about

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- (4) illasialmate children who were born in Mexico of American mothers who had proviously ... resided in the United states; and
- (5) Azerican winen who were Earried to Rexiden eltizens en er etter desceber 20,

A percen who was born in Hemico of en American father red who esteined the ego of trenty-one years paint to Jenuary 6, 1926 and who fulfilled the legal resultaments necessary to obtain bettern mattenality will be resorted as having lost distinct distanced of the date then . such requirements were fulfilled;

Aserican citizene coming within categories (1); (0); (a), (4) or (5) nontioned in the proceding paragraph should be worned not to make the declaration of elleriones to Marico as set forth in Article 17 of the Mexicon Law of January 5, 1984, or suggested on these ber 13, 1989, if they can possibly evolved dring on. Ly media; such a declaration on Merican distant may render it Lapractiepole or impossible for the Recentrant or its diplomate and consular efficers to extend protection or ansistance to him simuld orderelen arise wherein protection or assistance is equiple.

All cares in which the Department has heretofore expressed in contrary view as to the citizenship status of persons coming within the clarest apparament instruction should be resubsitized to the Department for its further consideration.

Very truly yours, Calling of percent coming within the clarest alcoused in this

Very truly yours, Colonial Postate:

170-Frieto, Culliarno Coutil

PD:430:ETD 3/10/45

EXHIBIT XIV(d) -- LETTER DATED JUNE 1, 1944 ANNEXED TO AFFIDAVIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

PRISEPORT DIVISION

Subject File

AIR KAIL ...

f.-- ' .

The Eonorable ... Gaorge E. Menserraith, American Adocerdor, Mexico City.

The Department schnowledges the receipt of your Gernatch No. 13047 of August 8, 1943 referring to the report fated Jenuary 8, 1945 nurperting to show high Guillerro Sottil grieto lost may claim which he way have had to American citizanchip by making a declaration of allegiance to Merico. It is stated in the report that fir. Frieto was born at San Antonio, Texas on September 81, 1817 and in an efficient subscribed by him on Jamery 6, 1868 it is stated that his perents were Regions officers. It is assumed from the facts in bis onse that his parents were native born Mexican citizens and that in connequence he accuired Mexican mationelity under the previsions of Section 1 of Article 50 of the Lambon Constitution of 1917.

The case of Er. Frieto involves a matter in regard to which the Department has hed considerable concern.
The Department's concern involves the action of the Mexican authoritics in requiring any person who has both the nationalities of the United States and Mexico to make a decleration of allegiance to Mexico and renunciation of allegiance to the United States as a condition precedent to being parmitted to reside permanently in Verico or obtaining a document showing that no has Mexican nationality unfor hexican law.
The proctice of the Mexican authorities has come The prectice of the Mexican authorities has come before the Denortment in counsciion with cases of percens who wert born in the United States of Mexican parente, persons who were born in Mexico of American parents and American women who are married to dexican citizenc.

The Department has corefully concidered the above metter in connection with a number of cases now proding before it and it her concluded, in view of the information conveince in your despetch under acknowled went

and other information contained in its files, that a person who was born in this country of Hexican parents and the acquired both American and Mexican nationalities at birth should not be considered to have lost American nationality by making a declaration of the nature referred to in Article 17 of the Textorn low of Junuary 5, 1934, as amended on December 13, 1939. There seems to be no provision of Mexican law, or regulation having the force of law, requiring such a declaration. In this connection attention is called to the Statement contained in Volume III of Reckworth's Bigent of International Law, pages 213-219, that "The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a forsign state, the cash sums be one which is prescribed by lew or by regulathers having the force of law' and must be taken before a competent official of the government concerned. . While this statement involved cases erising under the provisions of the first paragraph of Jackian 2 of the Act of March 2, 1907, the Department has herevefore followed the same construction of the law with respect to the travisions had Section 401(b) of the Unitendity Act of 1940. Cases of persons who were born in the United States of Mexican percents which are now pending before the Department will . be disposed of in accordance with the views herein expressed. All such exces in which the Department has . heretofore expressed a centrary view should be resubmitted to it for further consideration. was to a logic of the .

In Cases of persons who were born in Poxico of American fathers involve a more complicated legal situation. Section 1 of Article 30 of the Feriarn Constitution of 1917

provides in part as fellows:

"Persons born within the republic of foreign parentage shall likewise be considered Regions by birth, the within one year after they come of age shall declare to the Bosartment of Foreign Affairs that they clost Regions eithership, and the shall further-there prove to the said department that they have resided within the country during the six years impediately prior to the said. six years immediately prior to the coid declaration. " The way to the first of

Section 2 of Article 30 of the came Constitution provides "Mexicane by naturalization are:

*(a) The children of foreign percetage born in the country, who shall elect Mexican forceping clouds, and in the reciprocal qualification required in cald section does not concur.

Any person who failed to fulfill the conditions of the phove custed provisions of Article 30 of the Constitution of 1917 and the attained the age of twenty-our

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THE COURT OF

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years before Jenuary 20, 1034 could thereafter avail himself of the provisions of article 3 of the transitory provisions of the Hemican Law of January 20, 1974, which reads na follows:

"All those born in Memico of aliva fathers who may have negatived to slaged the provided of . one year greated by Sections I and II, A, of Article 20 of the Constitution of 1917 in which to elect Periors assignative, may accuire devices notingelity by birth, provided that within two notionality by birth, provided that within two
years after the date of the publication of this
Law they closs such actionality before the Linistry
of Foreign delations and prove that they were born
in dexico and rescret majority before the publication of this less but after May 1, 1817.

for decree of April 5, 1780 the period during which prosons who were born in order of older fathers could elect ... Remines reviewed by the extraled for the years and my theore of Merch 10, 1000 such period was extended for jenother year, or until January CO, 1000. By decree of December 18, 1000 Article 2 of the transitory provisions of the Eaxiesh law of January 20, 1966 was asended no . tollows: ...

parents usy require Mexico of forcien

| parents usy require Mexicon nectionality by
| hirth provided that arrest before the injecting
| of Relations stating that desire of requiring
| it, proving that they were bern in Mexico and
| that they attained their majority prior to
| Jenuary 5, 1834 but subsequent to May lat, 1817,
| it end they must make the renouncements referred to
| the Thistery of Relations shall in this
| case make the corresponding declaration.

Any percon who wer born in Hexico of an American father and who has fulfilled the conditions of any of the undvisions of Mexican law emoted in this paregraph is conridered to have been neturalized in dexion remembers of the fact that he may be considered by that country to have abouted its entimality by birth and in consequence in considered to have lost his American citizenship under the law of the 'mited States, . Loss of American citizenship should be ascribed to the first repear on of Jection 3 of the Act of Terms P. 1967 or Section 601(c) of the fellowilly Aut of 1979, decreased much the date when demices that another was required, event that in the case of one mo potained Mexican anti-relity on or often demany 18, 1911, with the untwicking of Princh B of the transline wa-vicions of the law of January CO, 1976, as scienced on December 15, 1989, less of eltitensial smooth be morthed to lection -601(b) of the Estimatity Act bince 10 is clear that in

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excerpts from the Deposition of Francisco Liquori

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each came the declaration of edhesion, obsciouse and submission to the laws and authorities of Mexico referred to in Article IV of the law of January 20, 1934, as arended, must be unde before a judge who must submit the declaration to the Ulmistry of Foreign Relations which has authority to lique the declaration or certificate of nationality. Article 50 (A) (I) of the Maxican Constitution of 1817, as exended by the Maxican law of January 5, 1864, provides that the following are Mexican citizens by birth:

Those who are born in the territory of the Republic, whatever the nationality of their parents.

Article 1 of the Memican law of January 5, 1884 contains an identical provision. Beither the Constitution of 1817 as seemed nor the Mexican Nationality how of January 5, 1884 contain any provision resulting that a person born in Memico of alian person toke any step in order to be accorded the status of a Mexican citizal. It, therefore, follows that any person who was born in Memico of an American father and who had not attained the age of the new-one years until an or after January 3, 1864, the effective date of the Mexican law of January 5, 1864, would not be remired under Mexican law, or any remistion hading the ferce of law, to make a declaration of relegiance to Demico of the meture act forth in Article 17 of the Memican law of January 5, 1864 and if such declaration was reministered to him protuitionally he did not thereby lose American citizenship under the provisions of section 2 of the let of Memon 2, 1907 or Section 401(b) of the sationality Act of 1910. The Depumbers decires that you discuss this matter with the appropriate Mexican officials with a visu to ascertaining whether its observations concerning the Regional levs and the interpretation herein placed uron them are accurate and, if not, wherein they are invocurate.

The legal situation with respect to Apprican yourn who are married to believe citizens is somethat involved, incomment as the desican law of Jenuary 5, 1954, as meened on December 16, 1959, provides not only that an clien women who marries a Memican is a Memican citizen by neturalization, but also that the "Secretary of Foreign affairs whall make in this case the corresponding declaration". It does not appear from information have been we need the western and information have been we need ad, having the force of law, which sutherize the law my of Perbira affairs to immore, so a condition for the obtaining of a declaration of featern nationality, any colimation of adelaration of the nature above discussed. In this connection attached is called to the commencent tion from the Ministry of Foreign Delations to the Lawrest of Jenuary 2, 1942 conversing the case of first Francos brake Nimeh. In that communication the Ministry stated that it was "of the opinion" that the desiration required by law should not be incused unless, among other things, the interested party manner other things, the interested party manner of a memorial to the remunciation again in the George than of a memorial to the remunciation again in the George than

Maxtean

78 Exhibit XIV(d) Annexed to Affidavit of Herbert H. Chaice -- 5--Wenican Pationshity Law of 1926, or smeaded (which relate to the procedure in ferdinary naturalizations). This is not a clear out statement that may law or regulation, having win forme of how, emisse malch does in these require a remainstanted of foreign allegimes or declaration of allowinger to lemmo or which authorizes the foreign office to impose such a requirement in the discreption. In view of the contract nature of the communication just discussed and of the

> before they may estein a declaration of Hemican nationality. December of the minder of cesses now peofiling ... in mivlevia Divertee of Aperture perents and fueriess water who ere corried to Newtorn eltister, the Department desired that you tobe retion when this instruction as promptly as possible.

information contained in your completed of Aprost 5, 1940 in the arms of Callierno Bottil wricto, the

Penerthent desires that you endeaver to obtain from the appropriate Method officials a Safinite and unequivourl santament whether there is any proviction "" of Admican liv, or regulation having the from of les, pre-maring Alexacca women who are married to Mexican eithern to noke a Geolegician of allegiones to Jamico

as prompuly as possible.

Very truly yours,

For the Secretary of State:

130 - Prieto, Guillemo Cottil "120 - Minch, Prenoce Praire"

79

EXHIBIT XIV(e) -- LETTER DATED MAY 13, 1944 ANNEXED TO AFFIDA-VIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

PASSIONT D VISION

Subject File XX- 20 Server

May 18, 1944

Bear ilra. Chipley:

The neweranda of February 8 and February 18, 1944 to Le and the latter's apportants of April U and April 10, 1944 discuss the requirement of the Wexlern authorities that any verson who the term in the Called Castes of Mexican parents and sny American woman was is married to a Mexican citizen make a declaration of ellerious to Mexico no a consission precedent to soing permitted to recide permanently in Mexico or obtaining a Comment neowing that he or the beat exteen nationality under Newtonn law. Le serves that there is no provision of Mexican law, or regulation poving the farce of law, reculring declarations of allegiance to . eraco of vermone born on the United Distance of Merican parants, the stunched instruction takes the view that such warears will not be densidered to have lost American ditizanchin under the first paragraph of Scotion ? of the lot of herch 2, 1007 or under Section 401(b) of the Hautonality Act of 1940 by sading such declarations.

Le indicates that further inquiry chould be made of the Mexican authorities with respect to Massican women who are married to Hexican citizens and who have been required, in order to recein in Factor with their bucbonds or to obtain documents moving that they have Reviews notionality under Mexican Inv, to make declarations of allegiouse to Mexico. This is the wors numerous class and I believe the clean in which there is, in general, buch more merit.

There is another close of persons whose occes froquently come before the Department and some are now pending. That is persons born in Mexico of Aserican parents. The Mexican leve are numerous and remewhat involved. · have therefore discussed this metter in the instruction and acked the Embassy to escertain whether the Department's observations are soonrate and, if not, in what respect they are not.

I have propored the instruction for Mr. Berle's eignature. It shoul, of course, be routed through Le.

Δ 80

EXHIBIT XIV(f)--LETTER DATED APRIL 10, 1944 ANNEXED TO AFFIDA-VIT OF HERBERT H. CHAICE DATED JUNE 6, 1974

DEPARTMENT OF STATE
THE LEGAL ADVISER

April 10, 1944.

PD

Reference is made to your memoranda of February 8 and February 18, 1944, regarding the practice of the Mexican Foreign Office requiring certain persons possessing both American and Mexican nationality to make a declaration of allegiance to Mexico and a renunciation of American citizenship as a condition precedent to obtaining certificates of Mexican nationality.

In the case of persons born in this country of Mexican parents, it is the opinion of this office that in view of the Department's holding cited in your memorandum that loss of nationality on the basis of an oath of allegiance to a foreign state results only when the cath is one "which is prescribed by law or by regulations having the force of law" and in view of the specific statement of the Mexican Foreign Office "that no legal provision exists requiring persons been abroad of Mexican parents to renounce their foreign nationality and make protest of adherence to the Government of Mexico in order that they might enjoy the rights and privileges of Mexican nationality", such persons should not be held to have lost their American citizenship under Section 401(b) of the Nationality Act of 1940. The regulrements of the Foreign Office before issuance of a certificate of nationality in such instances appear to le merely a matter of administrative procedure.

The case of American women married to Mexicans is less clear, in as much as the Mexican nationality law of 1934 was amended in 1939 to provide not only that an alien woman who marries a Mexican is Mexican by naturalization, but also that the "Secretary of Foreign Affairs shall make in this case the corresponding declaration." Whether or not there are specific regulations of the Foreign Office, having the force of law, which authorize that Ministry to impose certain conditions on the issuance of the declaration (or certificate of nationality) does not appear from the attached correspondence.

Exhibit XIV(f) Annexed to Affidavit of Herbert H. Chaice

- 2 -

In the case of Frances Drake Mimeh, the Department instructed the American Consular Officer in charge on September 11, 1941 to inquire whether, if Mrs. Nimeh's statement did in fact constitute an oath of allegiance, such an oath was required under Mexican law. The Foreign Office replied to the Embassy's representations on January 2 that that Ministry was "of the opinion" that the declaration required by law should not be issued unless the interested party signed the renouncement and made the oath of adherence referred to in Articles 17 and 18 of the nationality law (which relate to the procedure in "ordinary naturalization"). This is not a clear-cut statement that any law or regulation exists which does in fact require such an oath of allegiance, or authorize the Foreign Office to impose such conditions in its discretion.

In view of the equivocal nature of the Foreign Office's reply to the Embassy's inquiry, and in view of the fact that a Foreign Office official has expressed the opinion orally to an officer of the Embassy that the procedure in question is arbitrary and that an American woman married to a Mexican is entitled to Mexican citizenship by virtue of the Mexican constitution without submitting to the Foreign Office requirements (130 - Prieto, Guillermo Sottil, despatch no. 12047, August 6, 1943), it is suggested that the Embassy might again be instructed to inquire whether there is any provision of Mexican law, or regulation having the force of law, requiring American women married to Mexicans to take an oath of allegiance to Mexico before receiving a certificate of Mexican nationality.

Le: KBFite: VM

A 82

EXCERPTS FROM THE EXECUTOR'S STATEMENT PURSUANT TO RULE 9(g), ¶60

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

Plaintiff, :

73 Civ. 2011 (KTD)

DEFENDANT'S

-v-

Dorothy Gould Burns,

WILLIAM L. MATHESON, as Executor of the Estate of

STATEMENT PURSUANT TO RULE 9(g) AND REPLY TO PLAINTIFF'S

STATEMENT

Defendant. :

ISSUES IN DISPUTE

60. In addition to the issue of fact set forth in the plaintiff's Statement as to whether Dorothy Gould Burns on December 21, 1944 intended to expatriate herself as a citizen of the United States, it appears from the brief submitted by the Government that it takes a view of Mexican law wholly unsupported in fact and in law. If that view is accepted by the Court as having some basis in fact, there is a factual dispute as to the requirements of Mexican law relating to the oath and renunciation made by Dorothy Gould Burns in her application for certificate of Mexican nationality.

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PAGES 1, 3-23, 34, 36, 43-48, 77, 81 AND 82

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

v.

: 73 Civ. 2011

(KTD)

WILLIAM L. MATHESON, Executor of the : Estate of Dorothy Gould Burns, Deceased, :

Defendant.

Y

Depositions of Francisco Liguori and Jose Liguori before Vice Counsul Kathleen J. Mullen at the Embassy of the United States of America, Mexico D.F., Mexico

Appearances:

Mel P. Barkan, Esq.
Assistant United States Attorney
Foley Square
New York, New York 10007
For the Plaintiff, United States
of America

Herbert H. Chaice, Esq.

D. Robert Owen, Esq.

Patterson, Belknap & Webb

30 Rockefeller Plaza

New York, New York 10020

For the Defendant, William L.

Matheson, executor

Also Present:

David M. Berman, Esq., Internal Revenue Service,
New York, New York
Lic. Graham Glascock, Basham, Ringe & Correa,
Mexico, D.F., Mexico
Donald T. Fox, Esq., Fox, Glynn & Melamed
299 Park Avenue, New York, New York 10027

.

Examination by Mr. Owen:

- Q. Mr. Liguori, would you state your name for the record?
- A. I am attorney Francisco Liguori Jimenez.
- Q. Where do you live Mr. Liquori?
- A. Av. Tennyson 328, Polanco District.
- Q. Is that Mexico City?
- A. Yes, in Mexico City.
- Q. What is your occupation?
- A. I retired from public service last year. Therefore I am at present without specific occupation. However, I practice the profession of lawyer sporadically.
- Q. How long have you practiced the profession of law?
- A. I have been practicing law with a degree for ten years.

 However, I was an assistant to various lawyers since 1938

 when I started my legal studies.
- Q. Mr. Liguori, were you acquainted with a man named Archibald Burns?
- A. Yes. I knew him. His name was Archibaldo Burns Moreno.
- Q. Could you briefly describe the circumstances under which you became acquainted with Mr. Burns?
- A. Yes. I met him at the office of my uncle, Attorney Ricardo Couto.

Mr. Barkan: Could you spell that?

Interpreter: Richardo or the last name?

Mr. Barkan: The last name.

Interpreter: C-O-U-T-O.

4 .

Q. At that time was your uncle Ricardo Couto a practicing attorney?

Interpreter: May I just break this please?

Mr. Owen: Go ahead.

- A. Yes, he was a practicing attorney. He had retired from being a District Court Judge and a Minister of the Supreme Court, Chief Justice, and he opened an office in No. 31 of Bolivar Street, where he was associated with attorney Salvador Ruvena, who at a later date was also a Chief Justice of the Supreme Court.
- Q. Mr. Liguori, do you remember approximately what year it was that you met Mr. Burns?
- A. I do not remember exactly if I met him at the end of 1943 or at the beginning of 1944.
- Q. In connection with your uncle at that time in 1943 or 1944 did you perform any professional services for Mr. Burns?
- A. I remember that during the year 1943 my uncle did not have his office located at No. 31 Bolivar Street but rather at No. 29 Madero Street where he was associated with attorneys Jorge Castaneda Rendon, father of a diplomat in active service, and Heraclio Rodriguez.

Mr. Barkan: Can you spell all those names?

Interpreter: Yes, of course, Jorge C-A-S-T-E-N -

with a little thing - E-D-A - the

second name is - R-E-N-D-O-N, Rendon.

Then the next gentleman is Heraclio - is H-E-R-C-L-I-O Rodriguez. Okay is that it?

Q. Well, I will rephrase the question.

Interpreter: Yes, I think we got lost here.

Mr. Barkan: Okay, yes. I'm sorry for the interruption, but its necessary for me anyway.

- Q. Sure. In 1943 and 1944 did you perform any professional services for Mr. Burns?
- A. His lawyer was my uncle attorney Ricardo Couto. He introduced me to Mr. Burns. I was an assistant of lawyer to that law office as well as the office of my cousin attorney Jose Liguori, whose offices were located at number 44 Venustiano Carranza Street. Therefore, I was rendering services to one law office as well as the other. And to respond to the question I think I remember that my uncle introduced me to Mr. Burns and thereafter because attorney Couto rendered services to Mr. Burns specifically in regard to the mining company called Compania Minera Concepcion Carmen y Anexas, company in which Mr. Archibald Burns was a stockholder.
- Q. In 1944 did you meet a woman by the name of Dorothy Gould?
- A. Yes, I met her, Dorothy Gould.
- Q. Can you briefly describe the circumstances under which you met her?

- A. I met her at Mr. Burns' home at the beginning of 1944. I think I remember.
- Q. Where was that home located?
- A. In 411 Chapultepec Avenue.
- Q. At that time were you requested either by Mr. or Mrs. Burns to render any assistance in connection with their marriage?

Mr. Barkan: I don't have an objection. I'm just confused. They haven't been married yet.

Mr. Owen I understand.

Mr. Barkan: Which Mr. and Mrs. Burns are you talk-

ing about?

Mr. Owen: Dorothy Gould and chibald Burns.

Let me rephrase this question.

Mr. Barkan: Please.

- Q. At that time were you requested by either Mr. Burns or Dorothy Gould to render any assistance in connection with their forthcoming marriage?
- A. Yes. Mr. Burns introduced me to her as his financee and he told me that he would like me to do him the service of going to Yautepec.

Mr. Owen: Spell it.

Interpreter: Y-A-U-T-E-P-C.

A. Morelos, where Mr. Burns had obtained a divorce from his first wife, in order for me to obtain a certified copy of

the divorce decree in order for me to take it to

Cuernavaca where he wished to get married to Mrs. Dorothy

Gould.

- Q. And did you do that?
- A. Yes, I did.

Mr. Barkan: May I interrupt?

Interpreter: Yes sir.

Mr. Barkan: Who made the request that you spoke

about?

Mr. Owen: About doing that?

Mr. Barkan: Yes.

Mr. Owen: He said Mr. Burns.

Mr. Barkan: He said -

Interpreter: Yes.

Mr. Barkan: Mr. Burns made the request?

Interpreter: Yes.

Mr. Barka . Okay.

Interpreter: He said -

Mr. Owen: But I'll ask him again if you want.

Mr. Barkan: I take the interpreter's word on it.

Interpreter: Yes, he did. He said that Mr. Burns

ordered him to go to the city of

Yautepec to gather the divorce decree.

- Q. What did you do?
- A. I went to Yautepec in order to pick up the certified

copy of the divorce decree, using therefor a letter proxy from Mr. Burns. I took said certified copy to Cuernavaca. I paid the corresponding fees for the registration and thereafter I delivered said copy to Mr. Burns and to Mrs. Gould.

- Q. And then what happened?
- A. Then, they asked me to take the official of the Civil Registry in order for said official to perform their marriage at their address in Cuernavaca.
- Q. Did Mr. Burns have a house in Cuernavaca?
- A. Yes. I do not know whether it was the home of Mrs. Gould or Mr. Burns, but it was located either in the Streets of Hidalgo and Guerrero or I think Allende. I do not recall.
- Q. Was Mr. Burns and Mrs. Gould married in Cuernavaca?
- A. In Cuernavaca.
- Q. Were you present at the wedding?
- A. Yes, I was present. I do not recall, however, whether I signed as a witness to the marriage, because there were other persons involved. I just don't remember. This was in mid 1944. I do not remember whether in May or June. However, I have here some documents which I've located in my private files.
- Q. Can you determine from your private files what the date of the wedding was?

9.

- A. Yes, I can.
- Q. Please give us that date?
- A. They are very old matters as you can see by the paper.
 May 24, 1944.

Mr. Barkan: It might be a good idea to identify the document from which he refreshed his recollection.

- Q. Would you identify the document that you looked at from which you refreshed your recollection on that date?
- A. Yes, I can. This is a copy of the affidavit where my cousin Jose Yes, I can identify that pursuant to the affidavit and writing.

Mr. Owen: Can we go off the record for just a

minute?

Mr. Barkan: Sure.

[Discussion off the record.]

Mr. Owen: Mr. Barkan would like the document to

which Mr. Liguori referred marked as

Deposition Exhibit A.

Interpreter: Do you wish me to continue translating

the explanation?

Mr. Barkan: Yes.

Interpreter: Okay

Mr. Owen: Wait.

Excerpts from the Deposition of Francisco Liquori

10.

Interpreter: All right.

Mr. Owen:

Okay. You're ready?

Mr. Barkan:

Has that been marked?

Vice Consul

Mullen:

Yes.

Mr. Barkan:

Let the record indicate that the

document has been marked as

Deposition Exhibit A.

Interpreter:

Would it be convenient to ask the

question again? Or do we pick it up

where we left it.

Mr. Owen:

Well, if you can recall what he said.

The question I asked was could you identify the document Q. from which you refreshed your recollection as to the date of the marriage of Mr. and Mrs. Burns. I'm going to repeat the question. It's an earlier question. Could you identify the document from which you refreshed your recollection as to the date of the marriage of Mr. and Mrs. Burns, which is now marked as Deposition Exhibit A? Mr. Barkan: I am going to write in "D-E-P Exhibit A" on the top of the document.

A. Yes, I can. Yes, I can.

- Identify it. Q.
- It is a communication where I appear as authorized to hear

notifications. This document is pursuant to which Mrs. Dorothy Gould, at that time Burns, requests that the Ministry of Foreign Relations issues a certificate of Mexican nationality.

- Q. Mr. Liguori, do you speak English?
- A. I studied English. However, I am not fluent.
- Q. In connection with any conversations you had with Mr. and Mrs. Burns in 1944, did you speak with them in Spanish or English?
- A. In Spanish.
- Q. Did Mrs. Burns understand, and speak and read Spanish?
- A. She understood and she made herself be understood.
- Q. Mr. Liguori, did you perform any professional services for Mrs. Burns in connection with her securing a certificate of Mexican nationality?
- A. Yes, I did.
- Q. Would you briefly describe the circumstances under which you were requested to perform such services?
- A. A few months after the marriage of Mr. Burns with Mrs.

 Dorothy Gould, I was summoned to their home here in

 Mexico and they told me that they wanted to obtain a

 certificate of Mexican nationality for Mrs. Burns.
- Q. And where did that request take place? What location?
- A. At the home of the Burns located at 411 Avenue Chapultepec.
- Q. Who was present when that request was made?

A. I remember this was in 1944. Mr. Burns and Mrs. Burns were present.

Mr. Owen: I would like for the Vice Consul to

mark this document as Deposition

Exhibit 1.

Mr. Barkan: Why don't we mark it Deposition

Defendant's Exhibit 1?

Mr. Owen: Okay.

Mr. Barkan: Okay.

Mr. Owen: Mark it Deposition Defendant's

Exhibit 1.

Q. I hand you Deposition Defendant's Exhibit 1 and ask you if you recognize that document? I just want to know if he recognizes it.

Interpreter: There's a problem with the terminology
here. I translated exactly what you
said "Deposition Defendant's Exhibit
l" and Mr. Liguori was questioning
me what is a defendant. I think he
doesn't know what we're talking about.

Mr. Barkan: Why don't you go off the record.

[Discussion off the record]

Q. Mr. Liguori, do you recognize that document which is marked Deposition Defendant's Exhibit 1?

- A. Yes, I do.
- Q. Would you tell us what that document is?
- A. To obtain the certificate of Mexican nationality of Mrs.

 Gould Burns, it was necessary to have a certification of a domicile, which at that time was requested from the corresponding police precinct of the area, so that the residency to that area of Mexico City was certified of Mrs.

 Burns.
- Q. Did you prepare that document?
- A. Yes, I did.
- Q. By whom was that document signed?
- A. By Mrs. Dorothy Gould Burns. I want to point out that the name is written as it would in Spanish, that is to say,

 Dorothy Gould de Burns.
- Q. Were you present when Mrs. Burns signed that document?
- A. Yes, I was.
- Q. Now, where did you find this particular document?
- A. At the files which were before my practicing lawyer's files and are now my private files my private files in my home.
- Q. Now, do you recall whether or not the original of that document, as that appears to be a carbon copy, was written on a stationery letterhead?
- A. Yes, it was.
- Q. Do you remember what letterhead it was written on?
- A. That of the owner of the law office in which I was practising as assistant, attorney Jose Liquori, Jr.

Mr. Owen: I would like to mark this document as

Deposition Defendant's Exhibit 2.

[Discussion off the record]

- Q. I hand you a document marked Deposition Defendant's Exhibit
 2 and ask you if you recognize it?
- A. Yes, here it is.
- Q. Would you tell us what that document is?
- A. After having obtained the certificate of residence, Mrs.

 Dorothy Gould de Burns requests from the Ministry of

 Foreign Relations that a certificate of Mexican Nationality

 be issued in her favor, having as basis for her request

 that she has residence in the national territory and

 that she married a Mexican.
- Q. Now, did you prepare this document?
- A. Yes, I did. Of course, under the supervision of my cousin,

 Jose Liguori, who was the owner of the law office, be
 cause I was merely an assistant.
- Q. Who signed that document, Deposition Defendant's Exhibit 2?
- A. It is signed by Mrs. Dorothy Gould de Burns.
- Q. Were you present when she signed that document?
- A. Yes, I remember and I would like to point out that I read it out loud before Mr. and Mrs. Burns, making Mrs. Burns aware of the scope and of the reach of her declarations.
- Q. Where did you find this document?
- A. In my private files.

- Q. Now, this document, Deposition Defendant's Exhibit 2
 appears to be a carbon copy. Do you recall whether or not
 the original of that document was prepared on a letterhead?
- A. Yes. Exactly.
- Q. And, whose letterhead?
- A. The same letterhead. Therefore, it had the inscription of the address of my cou in's legal office, Jose Liguori, Jr. This is a carbon copy. However, it is sealed by the Ministry of Foreign Relations, as received.
- Q. Now, was Deposition Defendant's Exhibit 2 a copy of the document from which you refreshed your recollection as to the date of the marriage of Mr. and Mrs. Burns?
- A. This is a copy which refreshed my memory, while searching my files, of the original that I filed at the Ministry of Foreign Relations.
- Q. As to the date of the marriage?
- A. Yes, because I read the 24th day of May.

Mr. Owen:

Now, I would like this document marked as Defendant's Deposition Exhibit 2A, which purports to be a certified copy of a document certified by the Bureau of Naturalization and Nationality.

Vice Consul
Mullen: Defendant's Deposition Exhibit 2A?

Mr. Owen: Exhibit 2A.

- Q. And I hand you Defendant's Deposition Exhibit 2A and ask you if you recognize that document?
- A. Yes, I do.
- Q. What is it? Would you ask him to refer to this with the number?
- A. All right. It is an application. It is a photostatic copy of the application. This is a sealed copy with the seal of receipt by the Ministry of Foreign Relations
 Mr. Owen: That is, for purposes of the record,

- and this instead is a photostatic copy of the original petition already in file in view of that petition, because you can see the words "integrado" which means put together, which could be translated as "integrated file" signed by attorney Oscar Trevino Rios, who at that time was Under Chief of the Legal Department of the Ministry of Foreign Relations, and then the order of issuance signed by attorney Jose Lorenzo Cossio, at that time Chief of said Legal Department.

Deposition Defendant's Exhibit 2.

Mr. Owen: For purposes of the record the witness has been referring to Defendant's Deposition Exhibit 2A.

Q. With respect to Defendant's Deposition Exhibit 2A, would you have Mr. Liguori explain what "order of issuance" means?

When Mr. Liquori was describing the stamps and the writing

- on the margin of Defendant's Deposition Exhibit 2A, he mentioned a stamp that said "Order of Issuance." Would you have him explain to us what that means?
- A. It means that once the file was duly integrated and all the requisites fulfilled that at that time were required by Article Second of Paragraph II of the Law of Nationality and Naturalization of 1934, the Chief of the Legal Department ordered the issuance of said certificate.
- Q. Said certificate being what certificate?
- A. The certificate of Mexican nationality in favor of Mrs. Dorothy Gould de Burns.
- Q. With the exception of the stamps and the handwriting in the margin and the letterhead of Jose Liguori Jr. on Defendant's Deposition Exhibit 2A, is that Exhibit 2A a copy of the same document as Deposition Defendant's Exhibit 2?
- A. Yes, it is exactly the same.
- Q. At the time Mrs. Burns signed Deposition Defendant's Exhibit 2A, did you or did you not explain to her in substance that by signing this document she would be pledging allegiance to the Republic of Mexico?

Mr. Barkan: I object to the question as leading.

Mr. Owen: He's noted his objection.

- A. Yes, I explained it to her.
- Q. At the time Mrs. Burns signed the document, Deposition
 Defendant's Exhibit 2, did you or did you not explain to

Mrs. Burns in substance that by signing the document she renounced her allegiance and any protections from governments other than the Republic of Mexico?

Mr. Barkan: I object again to the question as

leading.

Interpreter: I'm sorry sir, would you repeat the last part of the question.

Q. Did you or did you not explain to Mrs. Burns in substance that she by signing this document - Ah, her allegiance to or protections from governments other than the Republic of Mexico.

Mr. Barkan: I object again as leading.

- A. Yes, I even read it to her and I explained to her the second paragraph and this other. Because she said that she had been married to a Count. Therefore, I explained to her this paragraph and this other, the two paragraphs, that is to say, "Pursuant to this writing I hereby formally protest my adhesion, obedience and submission to the laws and authorities of the Mexican Republic."
- Q. Let me interrupt. Just for purposes of the record, the witness is referring to Deposition Defendant's Exhibit 2, the third full paragraph of the first page, is that correct
- A. Yes, as well as this other paragraph.
- Q. Which is the fourth full paragraph of the first page?
- A. Yes.
- Q. Could he explain what the fourth full paragraph means?

- A. That in the case that she may have had a nobility title, she was waiving all rights to it.
- Q. Would he explain what the third full paragraph means?

Mr. Barkan: I'm not sure whether its an objection to form or as to substance, I'll note an objection. I think that the basis of my objection

Mr. Owen: is that it speaks for itself.

Mr. Barkan: the document speaks for itself.

Mr. Owen: But that's something you can raise later.

Mr. Barkan: Yes.

- Q. Would you explain what the third full paragraph means?
- A. That she adheres and submits and will obey the laws and authorities of the Mexican Republic, therefore waiving expressly to all foreign protection to said laws and authorities, committing herself not to invoke before the Government of the Mexican Republic no inherent rights to her nationality of origin.
- Q. Do you remember where this document Deposition Defendant's Exhibit 2 was signed?
- A. This was signed in the house which I have mentioned to you located at 411 Chapultepec Avenue.
- Q. Do you remember whether or not any one else was present besides yourself and Mrs. Burns?
- A. Mr. Burns was present. Yes, he was.

- Q. At the time Mrs. Burns signed the document Deposition

 Defendant's Exhibit 2, did you have any question in your

 mind that she understood what she was doing?
 - Mr. Barkan: I'll note an objection to the question as calling for a conclusion.
- A. No, I didn't have any doubts. She wanted to obtain her Mexican nationality as many women who marry Mexicans do. Furthermore, she wanted to reside in Mexico. As I understand she came from Lausanne, Switzerland, as I understand it, as I remember.
- Q. At the time Mrs. Burns signed this document Deposition

 Defendant's Exhibit 2, did you have any question in your

 mind that she was signing this document and taking the

 step involved in signing this document voluntarily?

 Mr. Barkan: Same objection.
- A. No, she did it freely. She had asked me together with Mr. Burns to do so, freely. It was a marriage which understood themselves; they were only six months married.

Mr. Owen: I would like to mark a document as

Deposition Defendant's Exhibit 3.

- Q. Mr. Liguori, I hand you this document and ask you if you recognize it?
- A. Yes, I do.
- Q. Could you tell us that the document is?
- A. It is the official communication issued by the Ministry

of Foreign Relations to the Ministry of the Interior - by the order of the Minister of Foreign Relations to the Minister of the Interior informing the Minister of the Interior that a certificate of Mexican nationality had been issued in favor of Mrs. Dorothy Gould de Burns.

- Q. Do you know the purpose of submitting such information to that Ministry?
- A. Yes, because Mrs. Burns was registered at the Department of the Interior as an alien and the effect of the official communication was to erase her from said registration and consider her as a Mexican national.
- Q. Where did you find this document Deposition Defendant's Exhibit 3?
- A. Well, I took care of pushing this document through and had it marked as Urgent so that she would no longer be considered as an alien, and I took this copy to the Ministry of the Interior in order to take care of the matter and have Mrs. Burns erased as a foreigner.
- Q. Now, where has the copy of that particular document been since he took that action, in his files, at the Ministry or where - this particular piece of paper?
- A. This was at the Legal Department of the Ministry of Foreign Relations and I took care of the matter, which is what one does in every case after obtaining the certificate of Mexican nationality.

[Discussion off the record]

- Q. Mr. Liguori, where did you find this piece of paper?
- A. This I found it in my private files.
- Q. And he gave it to me yesterday, is that correct?
- A. Yes, I delivered it to you yesterday.
- Q. For the purposes of the record could you identify the date of this document?
- A. Yes, here it is, the date of the official communication is January 3. However - whenever this official communication left the Ministry was January 8.
- Q. What year?
- A. Of the year 1945, because the certificate of Mexican nationality issued in favor of Mrs. Burns was dated January 2, 1945.
- Q. After you did this work for Mrs. Burns in connection with her obtaining a certificate of Mexican nationality, could you briefly describe what other services you performed for Mr. or Mrs. Burns after that time?
- A. Mrs. Burns requested that I take care of the immigration documents of her daughter of her first marriage by the name of Rolande de Graffenried de Villars. I will spell it for you.

Mr. Owen: Can we save some time and spell it for you.

Mr. Chaice: G-R-A-F-F-E-N-R-I-E-D.

- Q. Are there any other services you performed for Mr. or Mrs. Burns?
- A. Yes, there are a few. Yes, there are. After the

immigration documents of Miss Rolande de Graffenried de Villars, I took care of the housekeeper's immigration documents and we obtained their immigration as an immigrant in the care of a family, for which it was very helpful that Mrs. Dorothy Gould de Burns had obtained her certificate of Mexican nationality, because Miss Rolande de Graffenried de Villars entered the country as the daughter of a Mexican national.

- Q. Does he recall any further services he may have performed for Mr. Burns or Mrs. Burns?
- A. Thereafter, for Mr. Burns. Here I have various letters which have to do with various matters of Mr. Burns which I do not think it's necessary to spell out.

Mr. Barkan: I will definitely ask even out of the presence of the reporter that they be marked and that we be provided with copies of all those documents.

Mr. Owen:

Sure.

Mr. Barkan:

Okay.

Mr. Owen:

When we break you can look at them all

and mark what you want.

Mr. Barkan:

Well, I just want them all marked.

Might as well do it in numbered order.

Mr. Owen:

Okay, we'll do it at the break and

mark them all.

- Q. You stated that you went to a home in Cuernavaca?
- A. Yes.
- Q. How many times did you go there?
- A. I went approximately two times. I think I remember there were two times, it is 30 years ago.
- Q. Was the first time in connection with obtaining papers concerning the divorce of Archibald's first wife?
- A. Yes.
- Q. And the second time for the wedding?
- A. Yes.
- Q. Do you know who owned that home?
- A. I don't know. It was a beautiful home in the center of town.
- Q. About how many other guests were present at the wedding?
- A. I don't remember, but there weren't many. Almost all of them American.
- Q. And do you remember the names of any of those people?
- A. I don't remember. I was introduced, but I don't remember.

 There were some Mexicans.
- Q. Do you remember the names of the Mexicans?
- A. No, I don't remember, I didn't even know them. I think
 Mr. Isidro Diaz Lombardo, who was an associate of Mr.
 Burns, whom I understand is deceased and he is the brother
 of Antonio.
- Q. Did Mr. Burns have any children by his prior marriage?

- A. There must be a copy of them in the archives of the Ministry of Foreign Relations.
- Q. But you don't have any?
- A. No. None.
- Q. Do you recall whether Dorothy Gould Burns spoke Spanish to you?
- A. Yes, of course she spoke Spanish.
- Q. Did she speak badly, did she speak well, very well?
- A. She spoke with a foreign accent. However, she understood the language and made herself be understood. With her husband she spoke Spanish and English, alternately.
- Q. Would you say that she spoke badly?

Mr. Owen:

Let me ask a question. Are you talking about her pronunciation or her comprehension?

Mr. Barkan: Both.

- A. Only in her accent, her accent was that of a foreigner Apparently, she spoke French and English.
- Q. Did Archibald Burns speak English?
- A. Yes. He was a polo player and played with famous English polo players.
- Q. Did Dorothy Gould Burns tell you when she arrived in Mexico?
- A. No. I never knew.
- Q. Do you recall whether you saw servants at her house?
- A. Yes.

Mr. Owen:

We can agree to any procedure. I think,

if we can just do it in a law office

and have a notary. If he is agreeable,

we don't have to go through this process.

Mr. Barkan:

I am satisfied to have it as a sworn

document and I presume that it won't be

any difficulty for anyone to travel to

the U.S. Consulate to have the document

consularized.

Mr. Chaice: All right.

[Discussion off the record]

Mr. Barkan: For the record the interpreter has just explained our agreement to Mr. Liguori and he has consented.

Mr. Owen: And is that agreeable, Mr. Liguori?

- A. Yes.
- Q. I show you Defendant's Exhibit 2 and I ask you if you had any conversations with either Archibald Burns or Dorothy Gould Burns concerning the purpose or the reasons why Dorothy Gould Burns wanted a certificate of Mexican citizenship?
- A. Well, it is customary that every foreign woman who marries a Mexican desires to become a Mexican and as a matter of law she is a Mexican and all the Ministry of Foreign Relations is doing is recognizing that fact.

- Q. Now, did you have any conversations with either Archibald
 Burns or Dorothy Gould Burns concerning the statement
 which you just made?
- A. Yes, I did. Because at that time the prescription of law was that an alien woman married to a Mexican was a Mexican but that the Ministry of Foreign Relations should make the corresponding declaration thereof.
- Q. Why, if you know, did she or Archibald Burns desire to have a certificate?
- A. Because that was stated in the law, in the Constitution which provision required, relating to the Constitution, in Article Second, Paragraph II of the Law of Nationality and Naturalization, as amended December 30th, 1940, and was published on January 23rd, 1940, in the Official Daily. That provision read: "The alien woman who marries a Mexican and has or establishes her domicile within the national territory will keep Mexican nationality even after the marriage union is dissolved. The Ministry of Foreign Relations shall make in its case the corresponding declaration." That provision was in effect from 1940 through '49.
- Q. I don't think that that's responsive to my question. I asked if Mr. Liguori had any conversations with Dorothy Gould Burns or Archibald Burns concerning why a certificate was desired?

- A. Because she wanted to reside here with her husband and because she wanted to bring in her daughter from Switzerland. Then, she said I want you to take care of obtaining my certificate of Mexican Nationality before the Department of Foreign Relations. The war had not finished at that time in 1944 and she did not want to go back to Switzerland.
- Q. Do you know whether Dorothy Gould Burns immediately upon receiving this certificate applied for a Mexican passport?
- A. I don't. No, I do not know. Because when Mr. Burns called me up in regard to a passport for himself and his daughter Victoria.

Mr. Owen:

Let's identify it for the record.

He is looking at Government

Exhibit 1M.

- A. This is a copy of the application to obtain a passport requested by Mr. Burns for an ordinary passport to travel to United States and Europe accompanied not by his wife but by Victoria Burns, his and Dorothy's daughter, 14 months of age.
- Q. And what is the date?
- A. October 16, 1945.
- Q. And do you know whether Archibald in fact travelled to either the United States or to Europe after receiving a passport? First, did Archibald and his daughter receive a passport?

- A. Yes.
- Q. Did they travel to either?
- A. I don't think so. They had the passport but at that time they didn't travel. I don't have an idea. I am not certain that they travelled. But I didn't make the necessary proceedings to obtain a passport in favor of Mrs. Gould.

Mr. Owen: Did you say "I did not"?

- A. But I did not make any proceedings to obtain a passport for Dorothy Gould. Not that I remember.
- Q. Do you know whether she did obtain a passport?
- A. I do not know.
- Q. Concerning the immigration of Rolande, do you recall the date on which you performed the services?
- A. I do not remember. However, it must have been at the end of 1945 or beginning of 1946. Something like that. I will try and see if I can find additional documents. If not, I am willing to go to the Department of the Interior in order to obtain the necessary data, if any, because after 30 years of keep. g records they must be in the general archives.

Mr. Barkan: Well, I would appreciate such efforts, I think, on both our behalfs.

Mr. Owen: You just need the date?

Mr. Chaice: Off the record.

[Discussion off the record]

- Q. I show you Defendant's Exhibit 3 and I ask you who wrote the word "urgente"?
- A. I do not remember because below you will find the initial letters of the name of Oscar Trevino Rios, who was Under-Chief of the Legal Department of Foreign Relations. And that Legal Department was a dependency of the General Bureau of Juridicial Matters, whose Director was attorney Jose Lorenzo Cossio. That signature should be that of one of the attorneys of the Bureau whose name I don't remember.
- Q. Did you request that the application, Exhibit 2 and Exhibit 3, be processed urgently?
- A. Yes, I did, because it is a routine matter that every time that a certificate of nationality is granted. However, if one does not do something about it, it takes its time and, therefore, peculiar things may happen, such as having a person registered as an alien in the Department of the Interior and be considered as Mexican in the Ministry of Foreign Relations. Therefore, one has to make the necessary efforts to obtain such information from Foreign Relations to the Department of the Interior, so that there is no incongruency as to the record in the Department of the Interior and the record of the Ministry of Foreign Relations.

- Q. Did either Archibald Burns or Dorothy Gould Burns request that the application be processed quickly?
- A. I do not remember. However, it is my duty to make sure that the record of the Department of the Interior was erased so that she would no longer be considered an alien.
- Q. Did you ever represent Archibald Burns when he applied for a certificate of Mexican citizenship?
- A. Yes. I remember I did.
- Q. When was that?
- A. This was later. It seems that Mr. Burns used to state that he did not require a certificate of Mexican nationality, because he apparently could show that he was born because apparently he had a birth certificate issued in the State of Chihuahua and that was good while obtaining the certificate of Mexican nationality of his wife, Dorothy Gould de Burns. But thereafter, when he applied for his passport please let me have the application to obtain the passport and the certificate of Mexican nationality of Mr. Burns This application of passport

Mr. Owen: Which is Government's Exhibit 1M.

A. (con't) is dated October 16, 1945. He requested the issuance of his passport basing himself on his old passport and because he had to state under protest of saying

Gould Burns and her husband?

- A. Not in an intimate party, because they were much older than I was.
- Q. Did you have occasion to speak with Dorothy Gould Burns?
- A. Yes, as I stated before.
- Q. Do you know whether she spoke Spanish?
- A. Yes, she did, because her Spanish was as bad as my English but we understood each other.
- Q. Do you know someone named Leopoldo Olvera?
- A. I know several people by the name of Olvera. I know Raul Olvera, my "compadre," but not Leopoldo.
- Q. But not Leopoldo?
- A. No.
- Q. Have you ever spoken with Leopoldo about Dorothy Gould
 Burns?
- A. I do not know Leopoldo, therefore, I could not have spoken with him.
- Q. I believe previously you made some comments off the record that you do understand English but that you don't speak it very well. Is that correct?
- A. That is correct.
- Q. Do you understand everything that you hear in English?
- A. Roughly 70%.

Mr. Barkan: I have no further questions.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
	- x	
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-v-	:	STIPULATION
WILLIAM L. MATHESON, Executor of the Estate of Dorothy Gould Burns, Deceased,	:	73 Civ. 2011 KTD
Defendant.	:	
	- x	

IT IS STIPULATED by and between the undersigned attorneys for the parties herein that the foregoing are accurate transcripts of the depositions of Francisco Liguori and Jose Liguori.

Dated: May 14, 1974

PAUL J. CURRAN United States Attorney

By Mel P. Barkan
Assistant U. S. Attorney
Attorney for the Plaintiff
United States Courthouse
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New York, N. Y. 10007

PATTERSON, BELKNAP & WEBB

By Herbert H. Chaice
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Excerpts from the Deposition of Francisco Liquori

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EXCERPTS FROM THE DEPOSITION OF WILLIAM L. MATHESON PAGES 1, 2, 15, 17, 31, 32, 43, 51, 54, 66, 67, 72 AND 73 aml' UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK UNITED STATES OF AMERICA, 6 Plaintiff, 7 VS 73 Civil 2011 KTD 8 WILLIAM L. MATHESON, Executor of the Estate of Dorothy Gould Burns, Deceased, Defendant. 10 11 12 May 9, 1974 - 10:00 a.m. 13 Deposition of WILLIAM L. MATHESON, taken 14 by Plaintiff pursuant to notice at the United 15 States Courthouse, Foley Square, New York, N. Y., 16 before Anthony Mancuso, a Notary Public of the 17 State of New York. 18 APPLARANCES: PAUL J. CURRAN, Esq., 20 United States Attorney for the Southern District of New York 21 MEL P. BARKAN, Esq., Assistant United States Attorney 22 PATTERSON, BELKNAP AND WEBB, Esqs., 23 30 Rockefeller Plaza, New York, N. Y. Attorneys for Defendant William L. Matheson 24 HERBERT H. CHAICE, Esq., and D. ROBERT OWEN, Esq., of Counsel

25

A 117
Excerpts from the Deposition of William L. Matheson

1	emP 2	
ż	APPEARANCES: (Continued)	
3	Also Present:	
4	DAVID M. BERMAN, Esq., Internal Revenue Service, New York, N. Y.	
5	DONALD T. FOX, Esq., (Fox, Glynn and Melamed) 299 Park Avenue, New York, N. Y.	
7		
8	IT IS STIPULATED AND AGREED by and between	
9	counsel for the parties hereto:	
10	Sealing of the within deposition is waived;	
11	The witness may swear to and subscribe his	
12	deposition before any Notary Public, with the	
13	same force and effect as if so sworn to and sub-	
14	scribed before a Judge of this court;	
15	All objections except as to form are re-	
16	served for the trial.	
17		
18	MR. OWEN: I know the kinds of questions you	1
19	are going to ask. Can we make an agreement in line wi	th
20	our discussion and the stipulation that at this point,	
21	without our waiving any rights of relevancy, rights of	Ē
22	privilege, primarily, to the extent that the witness	,
23	answers questions he does not waive any rights he migh	it
24	have with respect to other communications?	
25	MR. BARKAN: By the same token, the other	

1	amP	Matheson	15
2	Q	In the answer to Interrogatory Number 1,	the
3	last senter	nce, you stated that you were "aware tha	at ·
4	Swiss citi	zenship was conferred upon the decedent	."
5	1	Frw did you become aware of that?	
6		ER. BARKAN: Will you make a note that !	Mr.
7	Matheer h	just conferred with his attorneys fo	r
8	navbe e mi	rute or so.	
8	4	I believe, Mr. Barkan, that some time i	n the
10	past I exa	mined, in a cursory way, the Swiss law	and
11	did ascert	ain that she probably obtained Swiss ci	tizen-
1,2	ship at th	e time she married Roland de Graffenrie	d.
13	However, s	ince then, I believe Mr. Fox, the attor	nev
14	for her da	aughters, did provide me with a confirma	tion
15	of that in	a memo or a certificate or some other	such
16	document,	which confirmed what I had already felt	÷.
17	Q	Do you recall how dis ant in the past y	you did
18	that resear	arch?	
19	A	No; I don't.	
20	Q	Before she died?	
21	λ	'Way before she died. I would say in t	he
22	fifties.		
23	Q	Do you recall when Mr. Fox confirmed to	hat to
24	you?		

Some time after her death.

25

Excerpts from the Deposition of William L. Matheson

amP Matheson 17 Not that I know of. A Do you know the exact date on which she Q entered Cuba? A No, sir. Do you know the approximate date? Q No, sir. A Is that information available to you some-0 how? A I believe it is in the State Department pass-10 port file. MR. CHAICE: Only by inference from the pass-12 port file, which seems to indicate shen she came here, 13 at the end of '40, she passed promptly down to Cuba -at the end of '40 or '41, only an inference from the passport file. 16 MR. BARKAN: I might have some objection 17 18 to your use of the word "promptly". MR. CHAICE: We didn't know at that time, 19 and we had no knowledge. 20 Q She didn't tell you when she entered Cuba? No, sir. A 22 In response to Interrogatory Number 2, the 23 second sentence of the first paragraph, you say: 24

"In addition, there are documents which are

25

A 120

Excerpts from the Deposition of William L. Matheson

1	amP Matheson 31
2	In 1953 she went to France after receiving
3	a message that her father was dying. She got in an
4	altercation trying to see him, because he said it
5	was reported that he said he did not wish to see her,
6	and she didn't believe the report and tried to see
7	him and was bodily thrown out of his apartment or
8	his apartment building.
9	Then she remained in France thereafter.
10	Q When you say that she didn't take her
iı	daughter, back in the late 1930's, I understand she
12	lived in Algeria.
13	A That's correct. Algeria or Morocco.
14	Q One of those?
15	A Yes.
16	Q Do you know whether her daughter lived with
17	her then?
18	A No; she did not. That's not the same
19	daughter. She had two older daughters: Rolande and
20	Dotsy, who were born in the mid 20's. They did not
21	live in Morocco with her, to the best of my knowledge.
22	She then had a child, born in 1944.
23	MR. CHAICE: Right.
24	A (Continuing) Victoria. And that's the
25	daughter to who. I referred when I said she did not take

121 Excerpts from the Deposition of William L. Matheson amP Matheson 32 her daughter to France with her. Q Am I correct in saying that when she went to the United States and Cuba and Mexico, at least until 1946, she didn't take her two daughters who were born in the mid-20's with her? Am I correct? 7 A No. As far as I know, she wasn't even in fact with them. That was during the German invasion 9 of France. 10 Prior to the German invasion of France, she 11 didn't have her daughters with her; is that correct? 12 A I am not the best witness on this. I be-13 lieve she did have them with her, but they went to live 14 at Juan Les Pins, and she wanted to get out of France because of the German invasion and didn't attempt to 15 16 take them with her. 17 I think they were with her just prior to her 18 departure from France. 19 Q She returned to France from Algeria? 20 That's correct. Or Morocco. 21 MR. OWEN: You understand that he is not testifying from personal knowledge. 23 THE WITNESS: That's evident. MR. BARKAN: Why don't I make it official?

What is the knowledge on which you are basing

25

0

Excerpts from the Deposition of William L. Matheson

1	amP Matheson 43
2	"The source of defendant's belief is the
3	document itself" referring to Exhibit A "
4	information supplied by Francisco Ligouri and infer-
5	ences drawn from material contained in the passport
6	file maintained by the Passport Office of the Depart-
7	ment of State of the United States."
8 -	What inferences are you referring to that
9	are drawn from the material in the passport file?
10	MR. BARKAN: Let the record reflect that
11	there has been a short conference of maybe two minute
12	between Mr. Matheson and his attorneys.
13	A The inferences that you refer to are those
14	drawn by myself with Mr. Chaice's and Mr. Owen's
15	assistance from the material in the passport file,
16	such as the denial of passport to her in the 30's,
17	continued problems with respect to her passport after
18	she arrived in Mexico, the general tenor of the
19	deliberations that were indicated in the Passport
20	Division of the Department of State.
21	Q Which deliberations are you referring to?
22	. A " with respect to whether or not she was to
23	have a passport from the United States.
24	Q In 1952 or 1953?

25

A

1951, '52 and '53.

	Excerpts fr	om the Deposition of William L. Matheson
1	maP	Matheson 51
2	A	Yes.
3	Q	Was he also ill at any time in the 1940's?
4	A	I have no personal knowledge of it.
5	Q	Based on information provided by others,
6	do you un	derstand that he was ill in the 1940's?
7	A	My impression and I can't tell you any
8	particula	r source is that he was never really well
9	after Wor	ld War II.
10	Q	Do you know when prior to World War II was
11	the last	time that Dorothy Gould Burns had seen her
12	father?	
13	A	Prior to World War II?
14	Q	Yes. Or at the beginning stayes of it.
15	A	Obviously, I have no perso 1 knowledge of
16	it.	
17	Q	I realize that.
18	A	I think she saw him shortly before she left
19	France.	
20	Q	Is that in or about 1940?
21	A	'39 or '40.
22	· Q	Do you know whether she corresponded with
23	him durin	g that period?
24	A	That wasn't possible, I don't think.
25	Q	How about in the time from 1944 to 1953?

1		rom the Deposition of William I. Matheson Matheson 54
2	A	No. There were no files.
3	Q	There were no files?
4	A	Not here.
5	2	Where were they?
6	A	I don't know that there were any. If there
7	were, they	were in France.
8	Q	Why were there no files here?
9	A	She only had some furniture and pottery and
10	china and	glass pictures stored up in the Lincoln
11	Warehouse	here.
12	Q	Did Dorothy Gould Burns' mother die a citizen
13	of the Un:	ited States?
14	A	I believe so.
15	Q	How about her father?
16	A	He was whose father?
17	Q	Dorothy Gould Burns' father.
18	A	He was a citizen of the United States, yes.
19	Q	How about her sister?
20	A	No.
21	Q	Of what country is she a citizen?
22	· A	Switzerland.
23		Can I qualify that?
24	Q	Certainly.
25	A	She's Swiss unless she's become French since

	Excerpts from the Deposition of William L. Matheson
1	amP Matheson 66
2	A I believe, Mr. Barkan, that in the correspond
3	ence that I had with the passport office, which will
4	speak for itself; I am not reviewing it here in any
5	detail; it will be clear that I did not take the
6	position that she was an American citizen United
7	States citizen, because I was not sure she was a U. S.
8	citizen. As a matter of fact, I thought she probably
9	wasn't.
10	But I did feel that she was entitled to a
11	United States passport for travel purposes.
12	Q You didn't tell anybody at the passport
13	office that you felt that she wasn't a citizen of the
14	United States, did you?
15	A I don't believe I did, because I didn't want
16	to jeopardize her obtaining a passport as early as
17	possible. When I found out that they were in the
18	midst of an adjudication and an administerial determin-
19	ation as to her citizenship
20	Q You didn't want to rock the boat?
21	A No. I didn't express an opinion. Then I
22	was advised subsequently that they had determined that
22	she had retained her United States sitissandia

Q What was the basis for your belief that she 24

25 was not a United States citizen at that time?

Δ 126

Excerpts from the Deposition of William L. Matheson

- 1 amP Matheson 67
- 2 A That she was married to a Mexican; that she
- 3 had been married prior to that to a Swiss; that she
- 4 had not resided in the United States for approximately
- 5 thirty-five years; that she had exercised none of the
- f rights of a United States citizen, generally speaking
- 7 was unaffiliated with the United States.
- 8 Q She had a United States passport prior to
- 1953; isn't that correct?
- 10 A Right.
- 11 Q That is exercising rights of a United States
- 12 citizen?
- 13 A I was going to say that it is conclusory,
- 14 and also I don't know if it is determinative. The
- 15 law provided that she was entitled to one if her
- 16 primary allegiance was to the United States, as I read
- if the statute at that time.
- 18 Q I show you a letter dated April 2, 1953, which
- 19 has been marked as Pages 676 and 677, from you to Mrs.
- 20 Shipley, director of the passport office of the
- 21 Department of State, and I ask you again whether this
- 22 refreshes your recollection as to whether or not you
- 23 took a position that Dorothy Gould Burns was a citizen
- 24 of the United States.
- 25 THE WITNESS: Would you read the question.

Excerpts from the Deposition of William L. Matheson

- 1 amP Matheson 72
- 2 jeopardy."
- You said that, did you not?
- 4 A Yes.
- 5 Q That phrase does not refresh your recollec-
- 6 tion that you took a position that Mrs. Burns was a
- 7 U. S. citizen before the passport office?
- 8 A I could rephrase it, but I don't think you
- 9 would like it.
- 10 What I meant was -- let me emphasize again
- 11 -- "Do not do anything in choosing that will put the
- 12 determination that you are a U. S. citizen for passport
- 13 purposes in jeopardy."
- 14 Q When did Dorothy Gould Burns' mother die?
- 15 A In August 1952.
- 16 Q Was there any kind of a proceeding at that
- 17 time in which Dorothy Burns participated in connection
- 18 with the distribution of her mother's estate?
- 19 A In the United States?
- 20 Q Either in the United States or France or
- 21 anywhere.
- 22 A There was some proceeding in France. I don't
- 23 know what it was. In the United States, ancillary
- 24 papers were given to Mr. Lewis and myself, and she,
- 25 of course, had to file a designation in the Surrogate's

Excerpts from the Deposition of William L. Matheson amP Matheson 73 Court here. Q In that proceeding, did she take the position that she was a United States citizen? A The file would reflect it, and I don't have the file. I am advised --7 Q The answer is yes? A Yes. When did Dorothy Gould Burns' father die? 10 In 1956. A 11 Q Was there any kind of proceeding in connection 12 with that? 13 A Yes. Q In that proceeding, did Dorothy Gould Burns 15 take the position that she was an American citizen? 16 MR. CHAICE: I am sorry. I didn't hear the 17 question. 18 MR. BARKAN: Read it back, please. 19 (Record read.) 20 A I am not sure. 21 That would be reflected in the papers that 22 are being produced? 23 A It may be. 24 Q Whether or not she did take that position? 25

MR. CHAICE: The probate petition was handled

EXCERPT FROM PARTIAL ANSWER TO INTERROGATORIES INTERROGATORY NO. 11

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff, :

-v-

: PARTIAL ANSWER TO INTERROGATORIES

WILLIAM L. MATHESON, Executor of : the Estate of Dorothy Gould Burns, Deceased,

73 Civ. 2011

KTD

Defendant. :

INTERROGATORY NO. 11

"11. State the names and present addresses of all children born to or adopted by Dorothy Gould Burns (as well as the dates and places of their births), all brothers and sisters of Dorothy Gould Burns, the parents of Dorothy Gould Burns and the grandchildren of Dorothy Gould Burns."

Name	Address	Relationship
Rolande de Graffenried Lascurain Riveroll del Prado (born May 5, 1926, in Paris, France)	Rio Nilo 47 Mexico, D.F. 5 Mexico	Daughter
Dorothy de Graffenried Borgia Juge (born August 29, 1927, in Yvelines, France)	Domaine de Vigne Groussiere Meounes (Var) France	Daughter
Victoria Alexandra Burns Trachsel (born August 14, 1944, in Mexico City, Mexico)	14 Chemin de Passoret 1234 Vessy Geneva, Switzerland	Daughter

Excerpt from Partial Answer to Interrogatories Interrogatory No. 11

Helen Maret

Villa Piquareste Sister

Boulevard du Littoral

Juan-les-Pins

France

Frank Jay Gould

Deceased

Father

Helen Kelly Gould

Deceased

Mother

Alexandra Florence

Trachsel

14 Chemin de Passoret 1234 Vessy

Granddaughter

Geneva, Switzerland.

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EXCERPT FROM PARTIAL ANSWER TO INTER GATORIES INTERROGATORY NO. 13

INTERROGATORY NO. 13

"13. State the names and present addresses of all persons whom you characterize as close friends of Dorothy Gould Burns in the years 1943 to 1949 and in the two years prior to her death."

Defendant does not personally know the names of close friends of the decedent during the years 1943 to 1949, as he was not then acquainted with her. She was then residing in Cuba and Mexico. Defendant understands that at that time most of her friends were British and European subjects residing or visiting in Mexico. With regard to the two years prior to her death, the defendant was a close friend of hers and the persons not related to her who are mentioned in her will were either close friends or relations by marriage to her first husband. Other friends and present addresses during the two year period prior to her death of which defendant has knowledge are as follows:

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J.-A. Pivot

Berthe Pourriere-Macry

Baron d'Empain

Present Address

"La Gauloise"
Hotel Provencal
Juan-les-Pins
France

10 rue de France Nice 06 France

Unknown (was last known to reside in Belgium)

AFFIDAVIT OF DENNIS R. CYR

Embassy of the United)
States of America)
Mexico, D.F., Mexico) SS:
United Mexican States)

Defore me Stantets B. Engelking Vice Consul of the United States of America, analy commissioned and qualified, personally appeared the person named below who, being duly sworn, deposes and says the following:

(1) My name is Dennis R. Cyr

RESIDING AT Suites Marne, Rio Marne 12

Mexico 5, D.r., Mexico

(2) I, Dennis R. Cyr, do hereby declare that on May 20, 1974 I, accompanied by Eva R. Corral, met with Lic. Tecdulo Angeles Zurita of the Mexican Immigration office. This meeting was set up by an Embassy contact. Our visit with Lic. Zurita lasted approximately twenty minutes. We were given access to File No. 4/351"45"/20870 and File No. 4/199972 for Lorothy G. Burns. Lic. Zurita was very nervous the entire time we were there. It appeared that he wanted to be cooperative but was afraid of possible repercussions from his superiors. Mrs. Corral and I selected two documents we wanted photocopied. The first was the final Immigration document of Dorothy G. Burns and the second was a letter from her to the Mexican Government (written in Spanish) requesting entry into Mexico for her daughter, Rolande. Lic. Zurita left with the files to see if they could be photostated. He returned five minutes later saying that we could not have copies because his superior was tied up and his permission was necessary. Lic. Zurita was still extremely nervous, so at that moment Mrs. Corral translated and handcopied the Immigration document. Lic. Zurita then explained the number system on the files and we departed.

(Deponent)

Subscribed and sworr to before me on May 3. 1774

at Mexico, D. F., Mexico.

Vice Consul of Abe

AFFIDAVIT OF EVA R. CORRAL

Embassy of the United) States of America) Mexico, D.F., Mexico) SS: Uniteu Mexican States)
Defore me Jeanners B. Engelking Vice Consul of the United States of medica, duly commissioned and qualified, personally appeared the person named below who, being duly sworr deposes and says the following:
(1) My name is Eva R. Corral
RESIDING AT Tamaulipas 236-202
Mexico 11, D.F., Mexico
May 20, 1974, I accompanied Mr. Dennis R. Cyr, Internal Revenue Service Revenue Agent to meet with Lic. Teodulo Angeles Zurita of the Mexican Immigration office in Minico City. This meeting was set up by an Embassy contact. It was necessary to accompany Mr. Cyr on this visit because Mr. Cyr does not speak Spanish and Lic. Zurita does not speak English. Our visit with Mc. Zurita lasted approximately twenty minutes. In a private office we were given access to File No. 4/19997 and File No. 4/351"45"/20870 for Dorothy G. Burns. Lic. Zurita was very nervous the entire time we were there. It appeared that he wanted to be cooperative but was afraid of possible repercussions from his superiors. Mr. Cyr and I selected two documents we wanted photocopied. The first was the final immigration document of Dorothy G. Burns and the second was a letter from Dorothy G. Burns to the Mexican Government requesting entry into Mexico for her daughter, Rolande. Lic. Zurita left with both files to see if they could be photostated. He raturned five minutes later saying we could not have copies because his superior was fied up and his permission was necessary. Therefore, at that moment I translated and handcopied the Immigration document data annuary 3, 1945. Lic. Zurita then explained the number system on the files and we digarted.
· · · Capanent
Subscribed and sworr to before me on May 31, 1994 at Maximo, D. F., Mexico.
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SUPPLEMENTAL AFFIDAVIT OF WILLIAM L. MATHESON, PARAGRAPH 2

STATE OF NEW YORK)

COUNTY OF NEW YORK)

WILLIAM L. MATHESON, being duly sworn, deposes and says:

* * *

2. Although the decedent died a wealthy woman, she did not come into substantial funds until after the death of her father, Frank J. Gould, in 1956. Prior thereto she had very little funds of her own and was forced to travel on planes and boats in tourist class rather than first class. Although she first became my client at the end of 1952 and I was not acquainted with her in 1947, the first year in which she applied for a United States passport after she obtained her certificate of Mexican nationality, it is my understanding that she applied for a United States passport and wanted to keep it because, when she travelled on her Mexican passport in tourist class, she was extremely dissatisfied with the treatment she received from airlines and shipping companies, and she felt that she would be accorded better treatment in tourist class if she carried a United State passport. I believe that her applications for a United States passport in 1947 and thereafter in no way reflect upon her intentions in December of 1944, when she applied for a certificate of Mexican nationality.

* * *

Due and timely service of one sopies
of the within APPENDIX is hereby
admitted this 2414 in Novasgan 1971

Zhomas Califf

Attorney for APPALLAA

Caulage P. Figure ...